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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1985

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IN RE THE MARRIAGE OF

KURT ROSENBAUM,

Appellee,

and

JEAN ROSENBAUM,

Appellant, acting Pro Se.

---

ON APPEAL FROM THE APPELLATE COURT

OF ILLINOIS, FIRST DISTRICT.

---

# JURISDICTIONAL STATEMENT

---

Jean Rosenbaum, Pro Se

1354 West Greenleaf Street

Chicago, Illinois 60626

973-6047 (312)

NO.

SUPREME COURT OF THE UNITED STATES

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## JURISDICTIONAL STATEMENT

---

JEAN ROSENBAUM, the Appellant, acting Pro Se, appeals from the final ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 entered by the Appellate Court of Illinois, First District on March 5, 1985. This ORDER affirmed in all respects the JUDGMENT OF DISSOLUTION OF

MARRIAGE entered by the Circuit Court of Cook County, Illinois, Domestic Relations Division, on December 16, 1983 (not December 12, 1983, as the Appellate ORDER states), which granted KURT ROSENBAUM a divorce on grounds of mental cruelty from JEAN ROSENBAUM, (his wife for over 36 years, who bore him three children). It allotted her only a minimal share of the marital property. Both trial court and the Appellate Court evaded the many Federal Constitutional issues entered at the trial court level by JEAN ROSENBAUM (hereinafter referred to as "Wife") and refused to rule on them.

QUESTIONS PRESENTED BY THE APPEAL.

The questions presented by the appeal, including the United States Constitution clauses which apply thereto, are:

1. If affluent KURT ROSENBAUM, the

Appellee (hereinafter referred to as "Husband"), who admitted he refused to meet any of his husbandly obligations for many years to Wife (with the exception of hospitalization coverage that also benefited him), and who has used every device to ostracize her from her own family, properly proved his lack of cause and provocation, as required under Illinois family law governing divorce on mental cruelty grounds? (U. S. Constitution, Amendments I, IV, V, XIV.)

2. If Illinois Public Act 83-954, effective July 1, 1984, which <u>may</u> have been applied to this case, is unconstitutional and defective, and should be voided? (The intention of the Act, as expressed by a sponsor, State-Senator William Marovitz, is to permit one spouse to secure a divorce from the other, even if con-

tested, after a two-year separation. Wife presented evidence the Act was misrepresented when passed; U. S. Constitution, Amendments IV, V, IX, X, XIV.)

3. If the Appellate Court Order in the related Interlocutory Appeal No. 82-1790 on the injunction issues violated Wife's Constitutional and family rights? (This Order approved the trial court decision which resulted in the cut-off of all practical forms of communication by Wife to Husband, despite their mutual family of three children borne by Wife, of which Husband is the real father.) (U. S. Constitution, Amendments I, V, X, XIV.)

4. If it is unconstitutional to require a spouse (Wife) to legally separate the family to pursue and enforce legal support rights? (U. S. Constitution, Amendments IV, V, IX, X, XIV.)

5. If the Court(s) below improperly equated the informal separation of the parties created by Husband's wilful abandonment of Wife, with legal separation requiring it not to fully recognize Wife's family and other legal rights? (U. S. Constitution, Amendments I, V, IX, X, XIV.)

6. If the oral agreement/contract between the parties entered into at time of marriage in 1948, which made Wife a one-half owner of all property acquired during the marriage, was improperly ignored by the Court(s) below in their decision-making? (U. S. Constitution, Amendments V, XIV.)

7. If the irregular Court processes employed by trial court and approved by Appellate Court, amounted to gross abuse of process and discretion, denial of due process and equal protec-

tion of law to Wife, and comprised prejudice against her cause? (U. S. Constitution, Amendments V, XIV.)

The foregoing includes, but is not limited to, the following subsidiary questions:

a) If the Court(s) below improperly refused to restrain Husband from disposing of marital assets during proceedings below?

b) If trial court held proper, legally conducted hearings on Wife's many contributions to the marriage and family, both prior to and after Husband's departure (required under Illinois marriage and divorce law), and if the Court(s) below improperly did not heed these contributions?

c) If trial court improperly refused to enter a Declaratory Judgment to clearly define the rights of

Wife in all aspects, including common-law rights, as Wife requested, and Appellate Court improperly ignored the issue, which was properly briefed?

d) If Appellate Court improperly refused Wife's requests to enter a proper, published Opinion in the cause, and certify important questions for appeal to the higher Courts?

e) If Appellate Court improperly did not rule on all important issues, which include but are not limited to (1) Wife's claim for damages from Husband because of intentional tort damage he did to the development and welfare of her children and damage to herself because of his wilful lack of cooperation, unusual behaviour, etc.; (2) the possible invalidity of Public Act 83-954 because of its misrepresenta- to the Illinois Senate Committee prior

to its passage, as well as for other reasons, etc.?

f) If Appellate Court improperly refused to state if it had considered Public Act 83-954 (effective July 1, 1984), or applied it to this case, when affirming the trial court judgment in all respects?

g) If the distribution of marital property (only about 10-11% to Wife after a 36-year marriage in which she bore and raised three children, worked in the Rosenbaum office, gave good advice, did without vacations many years, received little or no personal spending money, etc.), is vastly unfair to Wife, and improperly not in accordance with Illinois statutory law and legal precedents?

h) If the Courts below improperly denied Wife's request that the parties be referred to the Cook County Con-

ciliation Service of the Circuit Court?

i) If the Courts below improperly denied Wife temporary support at trial, payment of dental bills, a vacation, etc., from family marital funds, although the other family members enjoy these privileges from said funds?

j) If the Courts below improperly refused to permit Wife to investigate the possible partial or full sale of the Rosenbaum practice, and to secure a proper evaluation thereof when complications arose?

k) If the Courts below improperly denied aid to Wife in securing copies of the Forms 1099 filed on Husband's behalf by investment companies, etc., so she could secure an accurate picture of marital assets?

l) If the Courts below improperly denied aid to Wife in her attempt to

enter into evidence records from the Corporate Book of the 53rd-Woodlawn-Kimbark Shopping Center to prove her limited, one-half ownership therein, although she properly subpoened said Records? (Trial court outright refused to totally support this subpoena as well as that to Chicago-Kent College of Law for daughter Jody's records.)

m) If Appellate Court improperly denied Wife's motion for a supersedeas and stay of the trial court judgment?

n) If the Petition for Dissolution of Marriage was a genuinely valid document, and if trial court had jurisdiction to recognize it, as another case between the parties was still in existence?

o) If the Courts below improperly denied Wife the benefits of the legal

conclusions reached in the prior case between the parties, Rosenbaum v. Rosenbaum (1st Dist. 1976), 38 Ill. App. 3d 1, 349 N.E.2d 73, which granted Wife certain rights under the legal principles of res judicata and collateral estoppel, as well as estoppel by verdict?

p) If Husband adequately proved his charges in his ANSWER TO DEMAND for BILL OF PARTICULARS?

q) If Husband's witnesses were credible, and if Wife's "acts" were actually acts of mental cruelty, or merely distortions of reality on the part of Husband and said witnesses?

r) If the 20-page JUDGMENT OF DISSOLUTION OF MARRIAGE (hereinafter referred to as JUDGMENT OF DISSOLUTION) is unnecessarily cumbersome, highly inaccurate, needlessly slanderous to Wife, and should be voided

for these and other reasons?

s) If the JUDGMENT OF DISSOLUTION improperly deems large sums of marital funds to be property of the children without giving them control of it, thus enabling Husband to dispose of the funds in a whimful manner.

t) If the financial distribution and terms of the JUDGMENT OF DISSOLUTION resemble a "con-scheme" which can jeopardize the welfare of the entire family, Wife included.

u) If the Judges and Justices below were sufficiently free of innate male and other prejudice, and/or other influences, to rule impartially and according to law? That if so, they improperly did not voluntarily disqualify themselves?

8. If it is very unfair to undermine the security and status of a Wife and

Mother (married in 1948 after a serious economic Depression and World War II), with new law in her older years, when she might have conducted her entire adult life differently if she had known this could happen? (U.S.Amendments V,XIV.)

## PARTIES TO THE PROCEEDING.

Parties to the proceeding in the Appellate Court of Illinois were identical to those set forth in the caption of this document in this Court.[1]

1/ In trial court, KURT ROSENBAUM was the Petitioner, and JEAN ROSENBAUM the Respondent. In Appellate Court, Husband was designated Petitioner-Appellee, and Wife the Respondent-Appellant, and these designations are on all documents filed in the Illinois Supreme Court. However, in the latter Court, according to its usual custom, all Orders entered refer to Husband as Respondent, and Wife as Petitioner, the Wife having filed the Petition for Appeal As a Matter of Right, or in the Alternative, Petition for Leave to Appeal.

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OPINIONS AND/OR FINAL ORDERS ENTERED BY THE COURTS BELOW.

1. Appellate Court of Illinois, First District; Interlocutory Appeal No. 82-1790 (on injunction issues; ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 (Appendix to Jurisdictional [2]

[2] Hereinafter referred to as the "Appendix."

Statement, pp. (A.1-10)). Dated: December 28, 1982.

2. Appellate Court of Illinois, First District, Appeal No. 84-0489, ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 (Appendix, pp. (A.12-26)). Dated: March 5, 1985.

3. Related case, ROSENBAUM v. ROSENBAUM (First Dist. 1976) 38 Ill. App. 3d 1; 349 N.E.2d 73. Appellate Court of Illinois, First District (Appendix, pp. (A. 120-123)).

JURISDICTIONAL GROUNDS.

1. Nature of the proceeding. A divorce on grounds of mental cruelty was awarded to KURT ROSENBAUM from JEAN ROSENBAUM, his wife for 36 years and the mother of his three children which she delivered naturally, although he was denied a divorce on identical grounds in two prior cases. The Wife,

who strongly contested the case pro se, has challenged the constitutionality and or validity of a recent amendment to Ill. Rev. Stat. (1983), Ch. 40, Sec. 401 (known originally as P. A. 83-954, which permits one spouse to file for divorce and to be awarded same, after two years of ing apart, without citing fault grounds.

2. Dates of Orders and Judgments. The Appellate Court of Illinois, First District, affirmed the trial court decision in its ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 entered March 5, 1985 (Appendix (A.12-26)). The JUDGMENT OF DISSOLUTION OF MARRIAGE was entered by trial court on December 16, 1983 (Appendix, (A.67-102)). Wife also seeks review of the decision of the Appellate Court of Illinois, First District, entered December 28, 1982 in the related Interlocutory Appeal No. 82-1790 on the

injunction issues, also known as ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23, which affirmed the trial court decisions (Appendix (A.1-10)).

The Appellate Court Order denying Wife's Petition for Rehearing in Appeal No. 84-0489 was entered April 16, 1985 (Appendix, (A.27)).

The Appellate Court Order denying Wife's Petition for Rehearing in Interlocutory Appeal No. 82-1790 was entered on February 2, 1983 (Appendix (A.11)).

The Supreme Court of Illinois denied Wife's PETITION FOR APPEAL AS A MATTER OF RIGHT, Or in the Alternative, PETITION FOR LEAVE TO APPEAL on October 2, 1985 (Appendix (A.29-30)), and refused Wife's request for reconsideration of that Order in an Order entered November 12, 1985 (Appendix, (A.31)), on which day its Mandate was issued to the Appellate Court (Appendix,(A.29-30)).

Wife's Notice of Appeal was filed in the Appellate Court of Illinois, First District, on November 22, 1985 (Appendix, (A.32-66)).

3. Statutory Provisions Conveying Jurisdiction. It is believed the following statutory provisions confer jurisdiction of the appeal on this Court: 28 USCA 1257(2): 28 USCA 2101(c); 28 USCA 2103; and 28 USCA 2106. Pursuant to Supreme Court of United States Rule 28(4)(c), it is stated also that Federal Statute 28 USC §2403(b) may be applicable to this cause. It is further stated that to the best of knowledge of JEAN ROSENBAUM, no State of Illinois court has certified to the State Attorney General the fact that the constitutionality of Illinois P. A. 83-954 (effective July 1, 1984), an amendment to Ill. Rev. Stat. (1983), Ch. 40, Sec. 401, has been drawn in question, as well as that of Sec. 402 of the same

Chapter.

The amendment to Section 401 permits one spouse to divorce the other after two years of living apart, with no regard for loss of family inheritance, pension and other important spousal rights of the dissenting spouse, etc.

Section 402 equates the legal enforcement of spousal support rights with legal separation, which can automatically lead to other losses of spousal rights and further family difficulties.

The texts of 28 USCA 1257(2), 28 USCA 2101(c), 28 USCA 2103 and 28 USCA 2106 are set forth following:

> "28 USCA 1257(2): Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

INSERT "A"

This appeal was initially submitted for docketing within 90 days from the Illinois Supreme Court's denial of Wife's PETITION FOR APPEAL AS A MATTER OF RIGHT, Or in the Alternative, PETITION FOR LEAVE TO APPEAL, the Order of denial being issued on October 2, 1985 (Appendix, A. (29-30)).

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The text of 28 USC §2403(b) follows:

"(b) In any action, suit or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

"28 USCA 2101(c): Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court for good cause shown may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

"28 USCA 2103: If an appeal to the Supreme Court is improvidently taken from the decision of the highest Court of a State, or of a United States court of appeals, in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal, but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken ....."

"28 USCA 2106: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate or set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such further proceedings to be had as may be just under the circumstances."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The case involves the following provi-

sions of the United States Constitution: Amendments I, IV, V, IX, X, XIII, XIV. The pertinent texts of these Amendments are set forth in the Appendix (A.105-108).

The case involves the following Federal Statutes: Social Security; 42 USCA 402 (b)(1), 42 USCA 402(5)(A)(B); and 42 USCA 416 (c)(1). The pertinent texts of these Federal Statutes are set forth in the Appendix (A.108-109).

The case involves the following State of Illinois Statutes: Ill. Rev. Stat. (1983), Ch. 40, Sec. 401, Sec. 402, Sec. 503, Sec. 1001 and Sec. 1007. See the Appendix for the pertinent texts of these Illinois Statutes, pages (110-113-c) thereof.

## STATEMENT OF THE CASE.

This is the third divorce suit filed by Husband on grounds of mental cruelty

against Wife, who bore him three children, that she has had to contest, finally Pro Se. Although he is a U. S. citizen, he is of European background, and the constant litigation has eaten up Wife's earnings and left her with permanently damaged health. At no time during the over 17 years of litigation has she found any Illinois Court genuinely willing to enforce her rights as a Mother and Wife, and this has affected the marital and social attitudes of her three children tremendously.

The PETITION FOR DISSOLUTION OF MARRIAGE (hereinafter referred to as PETITION)was served to Wife on October 11, 1981, when the second suit on all issues had not been fully finalized, contrary to law, but the Court would not dismiss it.

Wife filed a DEMAND FOR BILL OF PARTICULARS, and Husband's ANSWER included a Police Complaint Wife had signed in desperation, when Husband violently and

uncontrollably physically attacked her one day without her provocation. Wife's MOTION TO STRIKE the Answer provided evidence Husband's attorney had misquoted her in his other charges. Wife's RESPONSE to the PETITION told the Court of Husband's severe blow on the head in an auto accident during the first years of marriage, and spells of unusual behaviour since. She further explained Husband's near-nervous breakdown due to urban renewal in his business neighborhood prior to leaving the marital premises, and that he frequently told her "she is not his Wife" despite their legal marriage. She asked the Court to dismiss the suit, which it refused to do.

In December, 1981, Wife filed a MOTION FOR INJUNCTIVE RELIEF, asking that Husband be restrained from abusing her physically and otherwise, from disposing of assets, and for a permanent injunction

to prevent Husband from filing further harassing divorce suits against her. Eventually Pre-Trial Court entered an injunction to prevent insults and her physical abuse, but refused other relief. Husband asked for an injunction to prevent Wife from telephoning him at the Rosenbaum office, in which she claimed a one-half interest, the only practical place where she could reach him, and it was entered. Wife then filed Interlocutory Appeal 82-1790 on the injunction issues, and the Appellate Court affirmed the trial court judgment in this respect completely. (A partial copy of the transcript of a hearing before Pre-Trial Judge Buckley relating to the injunction he entered against her appears in the Appendix (A.115-117), and reveals his unusual prejudice against her cause. In trial court, Trial Judge Ryan exhibited similar, strong attitudes against Wife.)

Wife's several requests for a referral to the Cook County Conciliation Service were consistently denied by both Judges.

Wife filed a MOTION RE DISCOVERY, and Husband's Answer to her Interrogatory on sworn oath admitted to marital assets of roughly $75,000-$100,000.00. Through discovery (drastically reduced by the Courts), Wife eventually discovered marital assets in excess of $600,000.00, and there is undoubtedly more. Husband refused to sign a release to the Internal Revenue Service, so she could get copies of his Forms 1099 to verify and discover assets, and the Court refused its aid in this respect. Judge Ryan also refused aid to Wife to enforce her subpoena for records of the 53rd-Woodlawn-Kimbark Shopping Center (in which Wife claims a one-half ownership interest in Husband's shares) and other related matters.

Husband greatly delayed in fulfilling

Wife's discovery requests, and then produced greatly inaccurate records, but nevertheless the divorce trial was hastened and not continued, as the situation justified, and Wife's discovery was never fully enforced.

Wife presented a MOTION FOR DECLARATORY JUDGMENT to trial court to establish what her rights as a Mother and Wife were, and it was denied. Appellate Court has evaded the issue. Wife asked for another inspection of real estate for evaluation purposes, because the original realtor decided not to get involved; it was denied. At Oral Argument, Attorney Berman admitted he asked them not to get involved. When Wife secured evidence the Rosenbaum practice in self-owned quarters may have been sold (in part or in full) trial court refused to reopen trial to investigate the development, and consistently refused its cooperation in all matters relating to

this marital asset. Trial court also struck from evidence Wife's GROUP EXHIBIT 20, her evidence of the robbery of important business papers from the Rosenbaum office, which might establish the validity of her claim to one-half interest in the Shopping Center property, etc.

During the divorce trial, Judge Ryan deliberately spoke very softly to Wife's deaf, left ear (acquired during the course of prior litigation) as she cross-examined Husband's witnesses, and suddenly dismissed the different witnesses from the stand prior to her completion of the cross-examination, when she did not hear his instructions. He later refused to recall them. He denied Wife temporary alimony, and her request that he disqualify himself voluntarily because of his prejudice against her, as case law requires. When after the Interlocutory Appeal was completed,

Wife found indisputable evidence of Husband's disposal of marital assets, he refused to restrain Husband from such action but referred the matter to Appellate Court although the case was no longer before them. He denied Wife's subpoena to Chicago-Kent College of Law for daughter Jody's records, and quashed same, and refused to restrain Husband from releasing false information that he was unmarried. Eventually he denied Wife payment from marital funds of her current, expensive dental care, special equities, retraining, etc., and restrained her from contacting Husband at the Quadrange Tennis Club of the University of Chicago, her only avenue remaining.

There is presently an arrearage in the Court-controlled bank account in which Husband was ordered to place all cash payments due Wife under the JUDGMENT OF

DISSOLUTION. Judge Ryan signed this document, and would not revise it, although it states Husband left the marital premises without fault or provocation on his part, despite the earlier determination from the higher court in Rosenbaum v. Rosenbaum (1st Dist. 1976) 38 Ill. App. 3d 1; 349 N.E. 2d 73 (Appendix, (A.121-122)). He refused to hear testimony about events prior to 1974, but attempted (A.69) to readjudicate a matter that happened in 1965. He heard no testimony about Wife's contributions to the marriage prior to 1974, when she was bearing and raising children and working in the Rosenbaum office at the same time, but based the limited financial award to Wife on the years prior to 1965 (Appendix, A.70; A.71; A.72)). He gave Wife no award from the City Savings and Loan Association account (on which her name was listed as co-owner), despite

the Stipulation of the parties hereto that KURT ROSENBAUM personally received all monies paid by that account (Appendix, (A. 104), which amounts to about $2,800) and Husband took a substantial tax deduction because of the loss sustained therefrom, in addition. He also held absolutely no hearing on the contributions of Wife to the marriage from 1965 until 1974, despite her limited financial award.

Wife eventually filed her AFFIDAVIT that the transcript of trial court proceedings contained serious omissions that deleted Judge Ryan's prejudicial statements, and that Judge Ryan stated in her presence "transcripts can be changed."

Nowhere in the 20-page JUDGMENT OF DISSOLUTION appears a trial court ruling on the issue of the oral contract/agreement between the parties made prior to, at time of, and reiterated after marriage, which made Wife one-half owner of all

property acquired during the marriage, despite the INTERLOCUTORY APPEAL ORDER requiring same (Appendix, (A.6)). Nor was the matter encompassed in any other Order.

In trial court, Wife preserved the right to argue the then new Public Act 83-954, an amendment to Section 401 of the Illi-Marriage and Dissolution of Marriage Act, Ill. Rev. Stat. (1981-1983), Ch. 40, effective July 1, 1984, should it be applied to the Rosenbaum case, because of overlapping dates, and she argued the point in her Appellate Brief, when the amendment became effective during the course of her appeal. All Constitutional issues were properly preserved initially in trial court.

Trial court referred the supersedeas and stay of Judgment issue to Appellate Court, which denied it, as well as Wife's request for a Prehearing Con-

ference. In its Order entered March 21, 1985, Appellate Court denied Wife's request for leave to file correspondence of pertinent nature with that Court. This correspondence included the highly important information that Wife had just learned in a very unusual way that Helmuth Teichner, who was an important witness against her, may now suddenly be in possession of Wife's sterling silver flatware (left for safekeeping daughter Jody) for which he paid a paltry sum, without Wife's authorization. The flatware was evaluated at about $5,000-$6,000.00, and the new information also strongly suggests that many years ago, he terrorized Jody.

The written Record on Appeal, containing voluminous Exhibits from both parties and a Report of Proceedings of about 830 pages, consists of approximately 1,769 pages. All issues were properly preserved in trial court, but because of

the large Record, it is not easy to find the stage in the proceedings in trial court at which the questions sought to be reviewed were raised. In a general way, it can be said that all questions were raised by some form of motion, and trial court invariably denied same. It allowed continuance after continuance to Husband to comply with discovery, but usually did not delay hearings or trial because of his lack of production. When Wife found indisputable evidence of Husband's vacation with another woman for which he paid (although he did not support Wife), through documents eventually produced, trial court had already orally announced Husband would be granted a divorce, and it refused to vacate that decision. The trial judge was most active in suppressing evidence that could defeat Husband's cause.

Wife's RESPONSE (TO PETITION FOR DISSO-

LUTION OF MARRIAGE DATED SEPTEMBER 25, 1981, timely-filed on November 9, 1981, immediately entered the Constitutional issues of Amendments V and XIV of the U. S. Constitution, (R. C.66). She continued to enter Constitutional clauses into proceedings throughout the case, and summarized them in her POST-TRIAL MOTION MOTION TO VACATE JUDGMENT OF DISSOLUTION OF MARRIAGE (R. C.1599-C.1628) as follows:

AMENDMENTS V and XIV .....(R.C.1604)

AMENDMENTS I, VIII, IX, ....(R.C.1605)

X, XIII ..... " "

Also see:.....(R.C.1607)

" " .....(R.C.1613-14)

AMENDMENTS entered re injunctions; see:

AMENDMENT IV .....(R.C.396)

AMENDMENTS I, IX, X .....(R.C.397)

Both Judges in trial court were totally disinterested in protecting Wife's proclaimed Constitutional rights, and Judge

Ryan outright scoffed. All documents pertaining thereto, to best of recollection, were denied in trial court.

At the Appellate level, the Constitutional issues were pleaded in Wife's Brief in Appeal No. 82-1790, on pages 26-28 thereof, and again discussed on pages 9-11 of her Reply Brief, and on pages 13-15 of her Petition for Rehearing. The Appellate ORDER DISPOSING OF APPEAL in this case (Appendix,(A.9-10))apparently considered them of no pertinent importance, stating (Appendix (A.10))--

"We, therefore, decline to consider the cited (Constitutional) provisions"

although they had been properly briefed.

In Appeal No. 84-0489, Wife pleaded Constitutional issues on pages 44 and 46 thereof, which the ORDER DISPOSING OF APPEAL ignored. She again raised the Constitutional issues on pages 10, 30, 31 and 32 of her PETITION FOR REHEARING, which was denied without comment (Appen-

dix, (A.27)).

The issue of the constitutionality of Public Act 83-954 was initially entered in trial court (R. C. 1608) by Wife; then presented in her Appellate Brief for Appeal 84-0489, pp. 44-47 thereof. The issue was again raised in Wife's Petition for Rehearing, pp. 31-34, but was ignored by the APPELLATE ORDER DISPOSING OF APPEAL (Appendix, (A.12-16)).

The issue of the constitutionality of Ill. Rev. Stat. (1983), Ch. 40, Sec. 402, which requires a spouse to legally separate the family to enforce support rights, was early raised in trial court (C.64). It was again entered in trial court in connection with Wife's PETITION FOR TEMPORARY RELIEF (C.740), asking for temporary alimony, which trial court denied. The temporary alimony issue was presented in Wife's Appellate Brief on page 61 thereof, and Appellate Court

affirmed all trial court decisions. Wife's Petition for Rehearing, pages 20-21, again mentions the issue.

The Appellate ORDER DISPOSING OF APPEAL (84-0489) cites In Re Marriage of Greenberg (1st Dist.1981), 102 Ill. App. 3d 938, 945-946; 429 N.E.2d 1334 to substantiate its point that property division need not be approtioned equally. However, the Greenberg case gives the Wife over 51% of the marital property (Appendix (A.22; A.118-119), and she also received an award of temporary support of 20% of Husband's net income. It is a case similar to the Rosenbaum's in many ways, but the evaluation of the Husband's practice as "minimal" does NOT include self-owned business property, as exists in the Rosenbaum case.

The relationship of the Social Security Act to P. A. 83-954 was discussed in Wife's Brief, page 46, in

Appellate Court, as well as in her PETITION FOR REHEARING, pages 31-34, but did not appear to be heeded by that Court, which did not mention it in its final ORDER DISPOSING OF APPEAL. That Court denied Wife's motion asking the panel to clarify if it had applied the Act to the Rosenbaum decision. She believes this, also, to be unconstitional under Amendments V and XIV, as it is her belief she has a legitimate right to know what she is fighting!

Wife's Brief (84-0489) also asked for damages from Husband, because of the intentional physical, mental, emotional and financial damage he has done to her, as well as to the attitudes and development of her three children (also his). She acquired her deafness during his harassing litigation and because he refused to support her, Ill. Rev. Stat. (1983), Ch. 40:1001. The issue was re-

raised in her PETITION FOR REHEARING, but not heeded or commented on by Appellate Court (page 29, Petition for Rehearing).

The Courts below equated informal separation of the parties with a form of divorce despite law from Federal Courts that has ruled otherwise, as well as State law. In Kandelin v. Social Security Board, C.C.A.N.Y. (1943), 136 F. 2d 327, 147 A.L.R. 596, it was ruled:

> "A wife is still a "wife" after she has abandoned her husband, and she becomes his "widow" when he dies and is therefore entitled to an award under section 402 of this title, unless this subchapter provides otherwise."

THE QUESTIONS PRESENTED ARE SUFFICIENTLY SUBSTANTIAL TO REQUIRE PLENARY CONSIDERATION.

The questions presented are very important to today's society, and sufficiently substantial to require the full and plenary consideration of the Supreme Court of the United States. Following

are a few of the reasons:

1. It is said that the traditional family structure in this country has grown very weak due to changing values in society. This is not necessarily true. From the facts presented, it can be seen that much of the fault lies in the Courts, and the refusal of Judges to enforce spousal rights. Despite some progressive legislation, Jean Rosenbaum, who married for a lifetime in 1948 and who has not changed her family values, has been unable to enforce any family right, or even to establish exactly what they are! She has found herself "almost divorced" with a meager allotment of marital assets, and if she meets with financial difficulty, her already damaged children must bear the brunt, and not the affluent Husband, who can dispose of marital assets in a way that will NOT benefit the family.

She has done no real wrong, but has been forced to spend years of her life and much of her funds to meet the never-ending litigation heaped upon her by persons who want to see her live like a "slave," with no enforceable rights, U.S. Amendment XIII. Rosenbaum v. Rosenbaum (1st Dist. 1976), 38 Ill. App. 3d 1, 349 N.E. 2d 73, ruled that a spouse desiring a divorce on mental cruelty grounds must prove lack of provocation (Appendix, (A.120-123)). Graff v. Graff (1st Dist. 1979), 71 Ill. App. 3d 496, 502, 389 N.E. 2d 1206, again ruled that proof of lack of provocation is an essential part of plaintiff's marriage dissolution case, but Kurt Rosenbaum has been rewarded with a divorce for publicly insulting and ignoring his wife, frequently hitting her, refusing to support her or provide her with a proper home such as he lives in, spending marital funds on other women, etc.

If the Illinois Appellate Court of the First District will not respect its own reasonable decisions, one can hardly expect citizens to respect the higher courts, or the entire court system.

The attitudes and development of the Rosenbaum children have been sorely damaged by watching "Mother" live at a much lower standard of living while Father is left free to spend marital funds on other women. If this has happened in the Rosenbaum family, it has also happened to others in the same way, and it is the duty of the U. S. Supreme Court to step in and attempt to correct the situation. In a court system that exists to protect the innocent from ill-doers, Jean Rosenbaum has lost much of everything that is near and dear to her -- her children have been damaged, her health has been damaged, her modest home was sold from under her and no new home

required to be provided by Husband, and her financial security has been destroyed, although she must soon retire. The JUDGMENT OF DISSOLUTION is based on has-been investment rates, which have considerably dropped, and does not consider the high doctor bills and medical expenses that may come with older age, some of which Wife has already encountered. It is an unrealistic, as well as inaccurate misrepresentation of facts, and can set a dangerous precedent.

2. In Struckoff v. Struckoff, 76 Ill. 2d 53, 60; 389 N.E.2d 1170 (1974), the Illinois Supreme Court ruled that a Court's jurisdiction in dissolution of marriage action is conferred only by statute, and it must act within statutory grant and may not rely upon its general equity powers. As Ill. Rev. Stat. (1983) Ch. 40, Sec. 401 requires Kurt Rosenbaum to prove his own lack of provocation to

be entitled to a divorce, it is apparent that the courts below exceeded their statutory grant of jurisdiction when granting him a divorce, which they were not entitled to do. The misuse of power can be very dangerous, as well as highly destructive, and the lower courts should be reprimanded properly, which can only be done effectively by the United States Supreme Court reviewing their decision.

3. Public Act 83-954, which permits one spouse to divorce the other after a two-year separation, shows a contempt for parents and children alike. As spousal social security rights, pension rights, inheritance rights, etc. can be taken away at the whim of the complaining spouse, this Act cannot be a validly Constitutional Act. Parents, can be forced, thus, to hand the welfare of their children over to a Court or Judge who has only a superficial

knowledge of the situation, which is dangerous, and contrary to the decision in Moore v. City of East Cleveland (1977) 431 U. S. 494, 503, which states --

> "Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."

Public Act 83-954 violates the foregoing concept and is in conflict with it, as are no-fault divorce laws in other States. It is a precarious situation, leaving family people in "mid-air", not knowing what might come next. It is necessary for the Supreme Court of the United States to "stabilize" the situation for the sake of society, and in the interest of family stability.

4. In 1948 Jean Rosenbaum married Kurt Rosenbaum and a part of their agreement prior thereto was that she would always be considered a 50% partner in the marriage. She often went

through sparse and troubled times with him. He is presently 73 years old, showing the ravages of age in different ways, and often "confused." Just prior to leaving the marital premises, he talked of having another child, and then suddenly left, which may have been the influence of another person who had no right to be in tne situation. Wife was left in middle-age without the possibility of having another family and, since then, has been deprived of all tne family experiences to which she is entitled by Husband. With a careless divorce entered, she also loses the old-age protections of the 60% spousal benefit in Husband's European pension, if she is predeceased, as well as any share of the pension of the American Optometric Society into which he has paid far over $100,000.00. The welfare rolls of this country have swollen with the kind of thinking that

permits these inequities to exist, and society is paying the toll with higher taxes, etc. Furthermore, the facts presented in this case evidence that the United States Constitution is left meaningless, if proper corrections in the process and judgments of the Courts are not forthcoming.

WHEREFORE, for the foregoing reasons, this Court should note probably jurisdiction of this appeal. Should the Court deem otherwise, then Appellant asks for such other relief as it deems equitable, providing such relief is acceptable to her goals.

Respectfully submitted,

JEAN ROSENBAUM, Appellant,
acting Pro Se.

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626;(973-6047 (312).

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Petitioner, acting Pro Se in the aforestated cause, that she has read the foregoing JURISDICTIONAL STATEMENT by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

JEAN ROSENBAUM, Petitioner,
acting Pro Se.

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 30th day of December, 1985.

Notary Public 4/14/86

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Appellant, acting Pro Se the aforestated cause, that she has read the foregoing revised JURISDICTIONAL STATEMENT by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

She also states that the original JURISDICTIONAL STATEMENT by her subscribed was timely-filed by United States Mail with Clerk of the Supreme Court of the United states on December 31, 1985, and the copies thereof returned to her voluntarily for revision by the Clerk of that Court on January 7, 1986 (received by her on January 13, 1986.

Pursuant to Supreme Court Rule 33.7, filing is not deemed untimely if the revised version is returned within a reasonable period of time (usually 21 days from January 7, 1986, according to the various Clerks of the Supreme Court of the United States).

Jean Rosenbaum

JEAN ROSENBAUM, Appellant,
acting Pro Se.*

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 22nd day of January, 1986.

Margaret B. Zgurowski

Notary Public *

My Commission Expires August 2, 1988

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

* See copy marked "Notarized Copy" for original signatures.

85-1296

Supreme Court, U.S.
FILED
JAN 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1985

---

IN RE THE MARRIAGE OF

KURT ROSENBAUM,

Appellee,

and

JEAN ROSENBAUM,

Appellant, acting Pro Se.

---

ON APPEAL FROM THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT.

---

# APPENDIX to JURISDICTIONAL STATEMENT

---

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1985

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IN RE THE MARRIAGE OF

KURT ROSENBAUM,

Appellee,,

and

JEAN ROSENBAUM,

Appellant, acting Pro Se.

---

ON APPEAL FROM THE APPELLATE COURT

OF ILLINOIS, FIRST DISTRICT.

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APPENDIX to JURISDICTIONAL STATEMENT

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Second Division, December 28, 1982

82-1790

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

| | |
|---|---|
| IN RE THE MARRIAGE OF | ) Appeal from the |
| KURT ROSENBAUM, | ) Circuit Court |
| | ) of Cook County |
| Petitioner-Appellee, | ) |
| | ) Honorable |
| vs. | ) Robert Buckley, |
| | ) Judge Presiding |
| JEAN ROSENBAUM, | ) |
| | ) |
| Respondent-Appellant. | ) C O P Y |

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

This interlocutory appeal (87 Ill. 2d R. 307(a)(1)) brought by respondent, Jean Rosenbaum, involves 2 injunctions entered during the course of a suit for dissolution of marriage filed by petitioner, Kurt Rosenbaum. This is the third suit filed by petitioner against respondent on grounds of mental cruelty. (See Rosenbaum v. Rosenbaum (1976), 38 Ill. App. 3d 1, 349 N.E.2d 73.) The parties have

lived separately since October of 1965.

At respondent's request, the court entered an order restraining petitioner from hitting, striking, threatening, cursing or interfering with respondent. She then unsuccessfully moved the court to modify the order to include other elements of relief which will be specified later in connection with our analysis of the issues. She claims that the court's refusal to modify the order constituted an abuse of discretion.

Subsequently, at the request of petitioner, the court entered a preliminary injunction against respondent prohibiting her from "harassing Petitioner and interfering with Petitioner by calling his optometry office and from attempting to do so." Respondent moved that the injunction be vacated or, alternatively, modified either to direct petitioner to give her his unlisted home telephone num-

ber or to specify certain times during which she could telephone the office. The court denied the motion. On appeal, respondent argues that this injunction is unconstitutional, and that the trial court abused its discretion in entering it.

A preliminary injunction is available only in situations where an extreme emergency exists and where irreparable and serious injury will result in the absence of injunctive relief. (Dixon v. Village of Lombard (1977), 50 Ill. App. 3d 590; 365 N.E. 2d 1131.) For a preliminary injunction to issue, the movant must establish possession of a right which needs protection, immediate and irreparable injury if the injunction is denied, no adequate remedy at law and a probability of success on the merits. (Central Building & Cleaning Co., Inc. v. Vodnansky (1980), 84 Ill. App. 3d 586; 406 N.E. 2d 32.) The standard of review on appeal is

whether the trial court abused its discretion in granting or denying the request for injunctive relief. (Roche Bros. v. Garrigan (1980), 88 Ill. App. 3d 107; 410 N.E.2d 338.)

We will first consider the propriety of the trial court's refusal to modify its order restraining petitioner from hitting, striking, threatening, cursing or interfering with respondent to include other elements of relief requested by her. The following is a summarized list of the other acts which respondent wanted petitioner restrained from performing:

(1) Transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of his optometric practice, or for the absolute necessities of life, and from taking trips, vacations, traveling, etc.

(2) Filing any more divorce suits against her.

(3) Entering her apartment without her permission.

(4) Depriving her use of the family car.

(5) Preventing her from enjoying family privileges and special rates at clubs to which he belongs.

(6) Ostracizing her from family celebrations and occasions at which their children may be present.

(7) Withholding from her wedding photographs taken at the weddings of their two sons.

(8) Withholding from her invitations intended to include both husband and wife.

(9) Refusing her transportation in the family car.

With respect to the first point enumerated, the court found an insufficient factual basis for respondent's allegation that marital assets were being

dissipated. While she alleges the existence of an oral contract whereby she became half owner of all assets acquired during marriage, this dispute is one properly settled at trial. Because the movant failed to sufficiently establish an immediate dissipation of assets, there was no showing that an injunction was necessary to prevent immediate and irreparable injury.

Respondent further claims that the trial court erred in refusing to enjoin petitioner from filing any more divorce suits against her because the appellate court in Rosenbaum v. Rosenbaum (1976) 38 Ill. App. 3d 1; 349 N.E.2d 73, already decided that he did not have statutory grounds for divorce. That decision, however, does not preclude petitioner from alleging and proving that subsequent acts of respondent constitute grounds for divorce.

Neither can we say that the court erred in refusing to enjoin petitioner from en-

tering respondent's apartment without her permission. Equity will not orginarily enjoin a criminal act because the Criminal Code, itself, acts as an injunction. People v. Goldman (1972), 7 Ill. App. 3d 253; 287 N.E.2d 177.

In our judgment, the remaining elements of relief requested are not proper subjects of injunctive relief. They do not present the type of situation in which immediate and irreparable harm will result in the absence of an injunction.

Respondent next contends that the trial court abused its discretion in refusing to vacate or modify the injunction restraining her from telephoning petitioner at his office. She also challenges this injunction on constitutional grounds.

During a hearing on petitioner's motion for injunctive relief, he testified as follows:

"(S)he continuously makes telephone

> calls, sometimes four or five in succession and asks questions of which I know nothing about, how many women do you see, you are a Communist, illegitimate son of a bitch, they have involved you in the abortion racket and you are involved in the drug racket and things which have no, absolutely no sense to me. These kind of acts interfere with my practice, interferes with my conducting examinations because she (is) constantly on the phone, sometimes four or five times a day."

At the conclusion of the hearing, the trial court entered the injunction preventing respondent from harassing petitioner by telephoning him at the office. She maintains that this was an abuse of discretion on the part of the trial court because it effectively cut off all communication between the husband and wife concerning family matters, especially matters involving their children. In assessing this argument, we note that respondent and petitioner have lived separately for 17 years and that their children are adults capable of estab-

lishing a family relationship with respondent without the involvement of petitioner. In light of these facts, and petitioner's testimony, we cannot say that the trial court's action constituted an abuse of discretion.

Respondent also claims that this injunction violates her constitutional right to freedom of speech. However, an individual's right of free speech is not inherently absolute but must be considered in light of the rights of others. (Arlington Heights National Bank v. Arlington Heights Federal Savings and Loan Assn, (1967), 37 Ill. 2d 546; 229 N.E.2d 514.) The injunction under consideration did not completely prohibit respondent from communicating with petitioner. Rather it barred her from harassing him with telephone calls at his office, based upon evidence that such calls were interfering with his livelihood.

Respondent has set forth in her brief a multitude of constitutional provisions with no argument as to how they apply to the facts before us. It is well established that an appellant may not make a point by stating it without presenting arguments in support of its position. (Nicholl v. Scaletta (1982), 104 Ill. App. 3d 642; 432 N.E.2d 1267.) We therefore decline to consider the cited provisions.

Respondent's last contention is that the trial court should have disqualified itself on its own motion because its views on the subject of divorce are contrary to Illinois law. Respondent failed to raise this issue in the trial court and has therefore waived it. Sorenson v. Fio Rito (1980), 90 Ill. App. 3d 368; 413 N.E.2d 47.

Accordingly, the orders of the trial court are affirmed.

Dated at Chicago, Illinois, this 28th

day of December, 1982.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| IN RE THE MARRIAGE OF | ) | |
| | ) | |
| KURT ROSENBAUM, | ) | |
| | ) | |
| Petitioner-Appellee | ) | |
| | ) | |
| and | ) | NO. 82-1790 |
| | ) | |
| JEAN ROSENBAUM, | ) | |
| | ) | |
| Respondent-Appellant | ) | C O P Y |

ORDER

Respondent-Appellant's Petition for Rehearing is hereby denied.

(Signature)
John J. Stamos, Justice

(Signature)
Maurice Perlin, Justice

(Signature)
Allen Hartman, Justice

Dated: February 2, 1983

STATE of ILLINOIS

Office of CLERK of the SUPREME COURT

Springfield 62706

THE COURT HAS ENTERED THE FOLLOWING ORDER IN THE CASE OF: GEN. NO. 57622

In re: Jean Rosenbaum, petitioner, vs. Honorable Judge Daniel Ryan, et al., respondents.

"The motion by petitioner, pro se, for leave to file a petition for an original writ of mandamus is denied."

"The motion, by petitioner, pro se, for leave to file Report of Proceedings after disposition of motion for leave to file a petition for writ of mandamus, if allowed, is denied."

JULEANN HORNYAK, CLERK

January 11, 1983

March 5, 1985 NO. 84-489 2nd Division

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | |
|---|---|
| IN RE: THE MARRIAGE OF | ) Appeal from the |
| | ) Circuit Court of |
| KURT ROSENBAUM, | ) Cook County. |
| | ) |
| Petitioner-Appellee. | ) |
| | ) Honorable |
| vs. | ) Robert Buckley and |
| | ) Daniel Ryan, |
| JEAN ROSENBAUM, | ) Judges Presiding. |
| | ) |
| Respondent-Appellant. | ) C O P Y |

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

On December 12, 1983, the circuit court of Cook County entered an order dissolving the marriage of Dr. Kurt Rosenbaum, petitioner, and Jean Rosenbaum, respondent. The order also provided for both a division of property and an award of permanent maintenance for respondent. Respondent appeals.

The circuit court's judgment followed years of marital litigation between the parties which was marked by three petitions for dissolution of marriage on grounds

of mental cruelty. The first petition, filed in the late 1960s, was denied, but in 1971 petitioner's second petition for dissolution was granted. Respondent, however, appealed that circuit court decision to this court which reversed the order of dissolution because petitioner failed to prove mental cruelty and his lack of provocation. (Rosenbaum v. Rosenbaum, (1976); 38 Ill. App. 3d 1, 349 N.E. 2d 73.) The third petition was filed on September 25, 1981.

In a judgment containing an extensive consideration of the facts of this case, the circuit court found that respondent committed repeated unprovoked acts of mental cruelty toward petitioner and declared this conduct grounds for dissolution. The judgment also details the various assets of the parties which form the bases of the court's property division and maintenance provisions. Respondent appeals from this

judgment.

I.

Proceeding pro se, respondent has filed numerous motions in this litigation, including a motion to strike petitioner's brief in the instant appeal, upon the grounds that: (1) the margins of petitioner's brief are in violation of Supreme Court Rule 344 (87 Ill. 2d R. 344); (2) no proof of service pertaining to petitioner's brief was received by respondent, also in violation of Rule 344; (3) a section of petitioner's brief does not fall within the headings allowed under Rule 341 (87 Ill. 2d R. 341); and (4) the petitioner's brief is not verified. This motion is denied.

Although adherence to the Rules is necessary to the proper administration of the court's business, the alleged defects regarding petitioner's brief do not merit the serious sanction of striking the entire brief. In light of the fact that peti-

tioner's brief is well within the page limitations set forth in Rule 341 (87 Ill. 2d R. 341), any irregularity of the margin size is insignificant. Further, neither the failure to send respondent a copy of the proof of service nor an improper section heading should be deemed fatal. Finally, there is no requirement that a brief be verified.

II.

On the merits of her appeal, Respondent maintains that the circuit court's order of dissolution of marriage on grounds of mental cruelty amounts to an abuse of discretion. She notes that the petitioner was required to prove his own lack of provocation under the Illinois Marriage and Dissolution of Marriage Act ("Act"). (Ill. Rev. Stat. 1983, ch. 40, par. 401 (2).) Relying on this court's earlier opinion in Rosenbaum v. Rosenbaum, 38 Ill. App. 3d at 13, in which it was found that

petitioner had neither alleged nor proven lack of provocation, respondent asserts that petitioner is barred by principles of res judicata and collateral estoppel from now proving his lack of provocation. In addition, respondent recites myriad allegations of petitioner's beating, abusing, threatening and cursing which she contends constitute provocation. Therefore, respondent argues that in view of our prior decision and her allegations of provocation, the circuit court's finding of mental cruelty and a lack of petitioner's provocation was an abuse of discretion.

Respondent's reliance on our prior decision for res judicata or collateral estoppel effect is misplaced. It fails to take into consideration our more recent disposition in this case in a Supreme Court Rule 23 Order (87 Ill. 2d R. 23), Rosenbaum v. Rosenbaum (Docket No. 82-1790, December 28, 1982) in which we held, inter

alia, that petitioner was not precluded from proving grounds for dissolution by subsequent acts of respondent. Thus the circuit court did not err in allowing petitioner the opportunity to prove his case.

In reviewing the court's finding that petitioner did prove repeated acts of unprovoked mental cruelty, the finding is presumed to be correct and will not be set aside on review unless it is against the manifest weight of the evidence. (In re Marriage of Mitchell (1981), 103 Ill. App. 3d 242, 246; 430 N.E. 2d 716; McGowan v. McGowan (1973), 15 Ill. App. 3d 913, 914; 305 N.E.2d 261.) Nevertheless, the judgment must be supported by positive evidence of conduct which causes embarrassment, humiliation and anguish so as to render life miserable. (McGowan v. McGowan, supra; Christian v. Christian (1979), 69 Ill. App. 3d

450; 387 N.E.2d 1254.) Here, petitioner's evidence of respondent's unfounded accusations, public confrontations, and harassing phone calls provides sufficient basis for the circuit court finding of mental cruelty. Further, petitioner's burden of proving his lack of provocation was a matter for the circuit court judge to determine. (Smith v. Smith (1977), 47 Ill. App. 3d 583, 586; 362 N.E.2d 123.) While this matter was bitterly contested, this court must not substitute its judgment for the judgment of the circuit court judge absent an abuse of discretion. (In re Marriage of Jones (1980), 90 Ill. App. 3d 95, 96; 412 N.E.2d 1122; Smith v. Smith, supra.) A thorough review of the record on appeal in this case reveals no such abuse with respect to either the question of mental cruelty or the lack of provocation, and therefore, the judgment of dissolution cannot be reversed on this basis.

Several other arguments are raised by respondent with respect to the decree of dissolution. She maintains that the circuit court should not have considered the criminal complaints that she filed against petitioner as evidence of mental cruelty because she views the complaints as statements made in judicial proceedings which cannot form the basis of a cause of action. (McDavitt v. Boyer (1897), 169 Ill. 475; 48 N.E.317.) Further, respondent contends that the petition for dissolution was not a legally valid complaint in that each count did not in itself state a cause of action (Herman v. Prudence Mutual Casualty Co. (1969), 41 Ill. 2d 468; 244 N.E.2d 809), and thus, should have been dismissed by the circuit court. Respondent also maintains that the court abused its discretion because the testimony upon which it based its decree was not credible.

Finally, she asserts that the circuit court judges who were involved in this case were not sufficiently free of prejudice so as to allow them to rule impartially and according to law. Thus, respondent concludes that on these bases the circuit court's decree of dissolution of marriage was an abuse of discretion requiring reversal.

These additional attacks on the judgment of dissolution are without merit. The petition for dissolution was a legally valid complaint for dissolution and property division, and the criminal complaints filed by respondent cannot be said to form the basis of petitioner's claim in light of the other evidence upon which to base the circuit court's finding of mental cruelty. Further, witness credibility was evaluated in the circuit court and will not be reevaluated by this court because the record

does not disclose that the circuit court's findings were against the manifest weight of the evidence. (In re Marriage of Jones, supra; Tandy v. Tandy (1976), 42 Ill. App. 3d 87, 89; 355 N.E.2d 585.) The record also fails to reveal any prejudice on the part of the circuit court judges toward respondent, and therefore the judgment of dissolution cannot be disturbed on this basis.

III.

Respondent's last argument on appeal is that the circuit court's property division and award of maintenance reflects an abuse of discretion. She identities a variety of alleged abuses including the court's failure to enforce discovery, its refusal to consider an alleged oral contract, its failure to award her temporary alimony, a vacation, and funds for dental care, its failure to refer the parties to a reconciliation service, and its infringement on

her right to cross-examine. Respondent contends that these abuses resulted in a property distribution which is unfair to her and contrary to law.

The standard of review of a property distribution is whether there has been an abuse of discretion such that no reasonable person could take the view of the circuit court. (In re Marriage of Lee (1979), 78 Ill. App. 3d 1123, 1127; 398 N.E. 2d 126; In re Marriage of Cihak (1981), 92 Ill. App. 3d 1123, 1125; 416 N.E.2d 701.) In addition, appellate courts find that a just division of property does not require the property to be divided equally. (In re Marriage of Caldwell (1984), 124 Ill. App. 3d 898, 901; 465 N.E.2d 523; In re Marriage of Greenberg (1981), 102 Ill. App. 3d 938, 945-46; 429 N.E.2d 1334.) Here, a review of the record and the circuit court's judgment reveals neither an abuse of dis-

cretion nor an unjust property division.

The record discloses that a vast amount of evidence was presented in the circuit court on financial matters, including evidence of the following: the assets of the parties at their separation; petitioner's provisions for the education, housing, medical and living expenses of the parties children since the late 1960s; the assets the parties received from the partition of the marital home by a prior decree; respondent's income as a part-time teacher; petitioner's income; various bank accounts which petitioner held as trustee for the parties' children; the value of petitioner's co-op apartment; the value of petitioner's interest in the shopping center in which he had his optometry practice; petitioner's stock holdings; his bank accounts and certificates of deposit; the value of petitioner's office equipment and inventory; his auto-

mobile and personal effects; petitioner's retirement fund; life insurance policies; bonds; social security benefits; and inheritances.

The circuit court judgment states that it was rendered after a full consideration of testimony, exhibits and argument. It makes detailed findings with respect to the aforementioned evidence and states that the court examined the evidence in light of the Act's guidelines for dividing property. (Ill. Rev. Stat. 1983, ch. 40, par. 503(d).) The court declared that it placed particular importance on the subsections of the Act pertaining to the contribution or dissipation of each party in the acquisition and retention of assets; the value of the property set aside for each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, employability, and needs of each spouse; the opportunity

for future acquisition of assets; and the tax consequences of the property division. (Ill. Rev. Stat. 1983, ch. 40, par. 503 (d)(1)(2)(3)(7)(10)(11).) The evidence in this case revealed, and the circuit court specifically found, that petitioner accumulated the bulk of his assets through his own efforts subsequent to the parties' informal separation in 1965, that since that time respondent has been self-sufficient, and that her health is good enough to allow her to continue to earn a living. In light of these factors, although the property division awards the majority of the property to petitioner, we are unable to find that no reasonable person could have found as the circuit court did.

With respect to respondent's specific allegations of abuses of discretion, we find that although production of certain objects of discovery may have been slow, it is evident that respondent ultimately

received adequate production. Further, the record reveals that respondent's cross-examination of witnesses was curtailed by the court only after repeated admonishments regarding relevancy. In addition, the circuit court was not bound to refer the parties to a reconciliation service particularly in view of the fact that they had not lived together since 1965. Finally, the court was not required to make any findings or provisions regarding alleged oral contracts, temporary alimony, vacations or dental care. (In re Marriage of Voight (1982), 111 Ill. App. 3d 623, 628; 444 N.E.2d 694.) Thus, a finding of abuse of circuit court discretion is not warranted in this case with respect to its property division and award of maintenance.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 5th

day of March, 1985.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

- - - - -

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| IN RE MARRIAGE OF | ) | |
| | ) | |
| KURT ROSENBAUM, | ) | |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| and | ) | NO. 84-489 |
| | ) | |
| JEAN ROSENBAUM, | ) | |
| | ) | |
| Respondent-Appellant. | ) | C O P Y |

ORDER

Appellant's Petition for Rehearing is hereby denied.

(Signed) _____
John J. Stamos, presiding Justice

(Signed) _____
Maurice Perlin, Justice

(Signed) _____
Allen Hartman, Justice

Dated: April 16, 1985.

APPELLATE COURT OF ILLINOIS, 1ST DIST.

IN RE THE MARRIAGE OF )
)
KURT ROSENBAUM, )
)
Petitioner-Appellee )
)
and ) NO. 84-0489
)
JEAN ROSENBAUM, )
) C O P Y
Respondent-Appellant, )
)
acting Pro Se )

ORDER

This cause coming on to be heard this day upon JEAN ROSENBAUM, Appellant's MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR REHEARING, and the Court having been advised in the premises;

IT IS HEREBY ORDERED:

The MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR REHEARING is hereby

ALLOWED _____ DENIED X

John J. Stamos, P.J.

ENTERED: Maurice Perlin

May 7, 1985 Allen Hartman

STATE OF ILLINOIS

SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September, 1985.

Present: William G. Clark, Chief Justice

Justice Daniel P. Ward ) FILED: APPELLATE
Justice Howard C. Ryan ) COURT, 1ST DIST.
Justice Seymour Simon ) November 15, 1985
Justice Joseph H. Goldenhersh
Justice Thomas J. Moran
Justice Ben Miller

C O P Y

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On the second day of October, 1985, the Supreme Court entered the following judgment:

No. 61917

| | |
|---|---|
| Kurt Rosenbaum, | Petition for Leave |
| Respondent | to Appeal from |
| v. | Appellate Court, |
| Jean Rosenbaum, | First District |
| Petitioner | 1-84-0489 |

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this twelfth day of November, 1985.

JULEANN HORNYAK, Clerk
Supreme Court of the State of
Illinois.

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

November 12, 1985

COPY

Ms. Jean Rosenbaum, 1354 W. Greenleaf Street, Chicago, Illinois 60626.

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent

v. Jean Rosenbaum, petitioner.

Motion by petitioner, pro se, for leave to file a MOTION for reconsideration of the order denying petition for leave to appeal. Motion denied.

Motion by petitioner, pro se, for an amended October 2, 1985 order. Motion denied.

Motion by petitioner, pro se, for stay of mandate pending the timely filing and disposition of a petition

for writ of certiorari in the United States Supreme Court. Motion denied.

Motion by petitioner, pro se, for leave to file alleged political activity affidavit. Motion denied.

cc Berman, Roberts & Kelly

JH/dem

NO. 84-0489

Appeal to the

SUPREME COURT OF THE UNITED STATES

From the

APPELLATE COURT OF ILLINOIS, 1ST DISTRICT

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| | |
|---|---|
| IN RE THE MARRIAGE OF | ) Appeal to the Appellate Court of |
| KURT ROSENBAUM, | ) Illinois, First |
| | ) District, from |
| Petitioner-Appellee | ) the Circuit Court |
| | ) of Cook County, |
| and | ) Illinois; Domes- |
| | ) tic Relations Di- |
| JEAN ROSENBAUM, | ) vision. |
| | ) |
| Respondent-Appellant, | ) Hon. Robert Buck- |
| | ) ley, Pre-Trial |
| acting Pro Se | ) Judge Presiding. |
| | ) |
| | ) Hon. Daniel Ryan, |
| | ) Trial Judge Pre- |
| (Filed Appellate Court | ) siding. |
| 1st Dist., Nov. 22, | ) |
| 1985). | ) C O P Y |

NOTICE OF FILING

TO: (1) Edward A. Berman, Attorney, 35 East Wacker Drive, #3400; Chicago, Illinois 60601; c/o Berman, Roberts & Kelly.

(2) Clerk of the Supreme Court of Illinois; Supreme Court Building; Springfield, Illinois 62706.

On November 22, 1985, I shall file with

the Appellate Court of Illinois, First District, Richard J. Daley Center, Clark & Randolph Streets, Chicago, Illinois, a NOTICE OF APPEAL (to the Supreme Court of of the United States), a copy of which is attached hereto and herewith served upon you.

(Signature)
JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

PROOF OF SERVICE BY MAILING

I, JEAN ROSENBAUM, being first duly sworn upon oath, depose and state I served the foregoing Notice of Filing with attached NOTICE OF APPEAL (to the Supreme Court of the United States), by placing a copy in envelopes addressed to:

(1) Edward A. Berman, Attorney; 35 East Wacker Drive, #3400; Chicago, Illinois 60601; c/o Berman, Roberts & Kelly; and

(2) Clerk of the Supreme Court of Illi-

nois; Supreme Court Building; Springfield, Illinois 62706;

and depositing said envelopes in the U. S. Mail at the Richard J. Daley Center, Clark & Randolph Streets, Chicago, Illinois, before the hour of 4:00 PM on November 22, 1985, proper first-class postage prepaid.

(Signature)
JEAN ROSENBAUM

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 22nd day of November, 1985.

(Signature)
Notary Public

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

NO. 84-0489

Appeal to the

SUPREME COURT OF THE UNITED STATES

From the

APPELLATE COURT OF ILLINOIS, 1ST DISTRICT

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| | |
|---|---|
| IN RE THE MARRIAGE OF | ) Appeal to the Appellate Court of |
| KURT ROSENBAUM, | ) Illinois, First |
| Petitioner-Appellee | ) District, from |
| and | ) the Circuit Court of Cook County, |
| JEAN ROSENBAUM, | ) Illinois; Domestic Relations Division. |
| Respondent-Appellant, | ) Hon. Robert Buckley, Pre-Trial |
| acting Pro Se | ) Judge Presiding. |
| (Filed Appellate Court 1st Dist., Nov. 22, 1985). | ) Hon. Daniel Ryan, Trial Judge Presiding. |
| | ) C O P Y |

NOTICE OF APPEAL

JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se in the above-captioned cause, hereby appeals to the Supreme Court of the United States, from the ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 entered

by the Appellate Court of Illinois, First District, Second Division, on March 5, 1985. This ORDER is attached hereto and made a part hereof as EXHIBIT "A".

Appellant's timely-filed PETITION FOR APPEAL AS A MATTER OF RIGHT, Or in the Alternative, PETITION FOR LEAVE TO APPEAL addressed to the Supreme Court of Illinois (docketed as No. 61917), was denied by that Court on October 2, 1985, but the Mandate of that Court was not issued to the Appellate Court until November 12, 1985, due to numerous outstanding matters (the Illinois Supreme Court Mandate is attached hereto and made a part hereof as EXHIBIT "B"). Jean Rosenbaum, the Petitioner in Illinois Supreme Court, filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION of the Order denying the PETITION FOR LEAVE TO APPEAL, which was denied by the Illinois Supreme Court in its Order entered November 12, 1985 (this

Order is attached hereto and made a part hereof as EXHIBIT "C"). Appellant has attempted to clarify and correct the paragraph marked (b) of this Order with the Clerk of the Illinois Supreme Court, as JEAN ROSENBAUM did NOT commit herself to the type of appeal or review she would seek from the U. S. Supreme Court, but thus far has not been successful. The last Order received by Appellant from the Illinois Supreme Court is dated November 18, 1985 (see EXHIBIT "D" attached hereto and made a part hereof). It was not feasible to file a Notice of Appeal earlier as all outstanding matters before the Illinois Supreme Court required its continuing jurisdiction, and Appellant attempted strongly to solve all the inequities in this case in the lower Courts.

Pursuant to United States Supreme Court Rule 10, it is stated:

1. The appeal of Jean Rosenbaum to the

U. S. Supreme Court is taken pursuant to 28 USCA 1257 (2); 28 USCA 2101 (c); 28 USCA 2103; and 28 USCA 2106.

2. Jean Rosenbaum appeals the final Order entered by the Appellate Court of Illinois, First District, on March 5, 1985 upon its completion of its review, entitled ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23. Appellate Court denied Appellant's PETITION FOR REHEARING, and her request for a genuine OPINION, because of the importance of the issues presented. The review was of the trial court JUDGMENT OF DISSOLUTION OF MARRIAGE, a 20-page document which appears in the Appellate Record, although it is too long to attach hereto as an Exhibit. The JUDGMENT OF DISSOLUTION is cumbersome, contradictory, highly slanderous to Wife, and inaccurate in the "facts" it presents. Appellate Court, however, approved it in entirety

without change.

3. The parts of the Appellate ORDER DISPOSING OF APPEAL appealed from are:

a) Part I, pages 2-3 thereof, wherein the defects in Petitioner's Brief (Kurt Rosenbaum) are deemed insufficient to strike it.

b) Part II, pages 3, 4, 5 and 6, pertaining to the divorce awarded to Kurt Rosenbaum from his Wife in the 36-year old marriage, Jean Rosenbaum, on grounds of mental cruelty, despite the fact she is the mother of his three children. The inaccurate assertation on Page 3 that "Respondent's reliance on our prior decision for res judicata or collateral estoppel effect is misplaced" is appealed, as it is not true. On page 4, it is difficult to understand how Appellate Court could affirm the trial court decision that Petitioner proved the Wife's repeated unprovoked acts of

mental cruelty when, in fact, the Husband admitted he refused to talk to the Wife at all times with few exceptions, that he refused to support her for many years despite his own high standard of living, that he refused to include her in any family occasions involving the children or other relatives, but brought other women to these occasions, etc. She testified that he frequently swore at her when she appeared, insulted and threatened her, hit, struck and kicked her, causing her humiliation and anguish. The testimony and facts brought out that Husband has NOT MET ONE of his husbandly obligations to the Wife for many, many years (except payment of Blue Cross). All Appellate conclusions on page 4 are under appeal, and its conclusions on page 6 also. Its award of a divorce to the Husband on grounds of mental cruelty, through its affirmation of the trial court judg-

ment, is strongly appealed.

c) Part III, pages 6 through 9, is appealed in entirety (finances and miscellaneous matters). Appellate Court has ignored all of Wife's valid claims and charges, and affirmed the trial court judgment on property distribution and all miscellaneous matters. Despite present Illinois family law which encourages a near-equal distribution of marital funds to the spouses, Jean Rosenbaum, despite her very limited financial resources, was awarded only about 11% of the marital property, despite the fact she no longer has a home (she was partitioned out of it by Husband), and Husband lives in a luxurious cooperative apartment. Marital funds eventually transferred or put in the children's names were deemed to belong to the children (all now past 30 years old), but left in the control of Husband, who can dispose of said

funds as he wishes, and they can be dissipated by strangers should he remarry. Appellate Court has evaded Wife's charge that this strongly resembles a "con" scheme. Although Husband has spent over $5,000 in dental fees from marital funds, Wife was refused payment of her own dental fee of about $1,500.00 from the same marital funds by the Court (affirmed by Appellate Court), and all financial matters are under appeal, <u>if the divorce is not reversed</u>. Wife's mediocre health has been ignored by the Courts below, and she should be retired, but cannot because of the inequitable financial award. Highly inaccurate facts are cited in Part III of the Appellate ORDER, all under appeal.

d) Also appealed are matters briefed in the Appellate Brief of Jean Rosenbaum, but simply ignored and not ruled on by the Appellate Court, which intensely required their consideration. These in-

clude, but are not limited to, the following:

1) The refusal of trial court to enter a Declaratory Judgment to establish specifically what the rights of a Wife are and to simplify the litigation, as Jean Rosenbaum requested;

2) The constitutionality of the comparatively new statute in Illinois family law which permits one spouse to divorce the other after a two-year separation, irregardless of children and the fact it is contested, Ill. Rev. Stat. (1983), Ch. 40, Amendment to Sec. 401, otherwise known as Public Act 83-954. Fraud in its passage is alleged by Appellant.

3) If Public Act 83-954 was used when Appellate Court affirmed the trial court decision granting Husband a divorce and, if so, whether this was proper, and in accordance with law.

NOT APPEALED is the award of permanent

maintenance to the Wife, in addition to a cash award; however, the amount of the permanent maintenance and its reduction after four years is appealed as insufficient, as is the cash award, and the amount of life insurance carried by Husband to which Wife is beneficiary (based on ancient economy). The issue of a Wife's support without legal separation was also presented but not ruled upon (this is a Constitutional issue) by Appellate Court, and is to be considered under appeal presently. Injunction issues are appealed.

With this Notice of Appeal, Jean Rosenbaum requests that the divorce awarded to Kurt Rosenbaum on grounds of mental cruelty be reversed and the case dismissed. If the cause is not reversed and dismissed, Appellant asks for such other relief as Jean Rosenbaum may be deemed entitled to by the Court. She further asks that she receive a more equitable portion of the

marital property (which is in excess of $600,000.00), and may be found to be more with further discovery. She asks for a proper home, and adequate hospitalization and medical coverage, as well as retroactive temporary alimony, etc.

(Signature)
JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Respondent-Appellant, acting Pro Se in the aforestated cause, that she has read the foregoing NOTICE OF APPEAL by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

(Signature)
JEAN ROSENBAUM

Subscribed and sworn to before me, a

Notary Public of the State of Illinois, County of Cook, this 22nd day of November, 1985.

(Signature)
Notary Public

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

March 5, 1985 Second Division

NO. 84-0489

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

| | |
|---|---|
| IN RE: THE MARRIAGE OF | ) Appeal from the |
| KURT ROSENBAUM, | ) Circuit Court of |
| Petitioner-Appellee. | ) Cook County. |
| vs. | ) Honorable |
| | ) Robert Buckley and |
| JEAN ROSENBAUM, | ) Daniel Ryan, |
| Respondent-Appellant. | ) Judges Presiding. |

C O P Y

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

On December 12, 1983, the circuit court of Cook County entered an order dissolving the marriage of Dr. Kurt Rosenbaum, petitioner, and Jean Rosenbaum, respondent. The order also provided for both a division of property and an award of permanent maintenance for respondent. Respondent appeals. The circuit court's judgment followed

EXHIBIT "A"

years of marital litigation between the parties which was marked by three petitions for dissolution of marriage on grounds of mental cruelty. The first petition, filed in the late 1960s, was denied, but in 1971 petitioner's second petition for dissolution was granted. Respondent, however, appealed that circuit court decision to this court which reversed the order of dissolution because petitioner failed to prove mental cruelty and his lack of provocation. (Rosenbaum v. Rosenbaum, (1976); 38 Ill. App. 3d 1, 349 N.E. 2d 73.) The third petition was filed on September 25, 1981.

In a judgment containing an extensive consideration of the facts of this case, the circuit court found that respondent committed repeated unprovoked acts of mental cruelty toward petitioner and declared this conduct grounds for dissolution. The judg-

ment also details the various assets of the parties which form the bases of the court's property division and maintenance provisions. Respondent appeals from this judgment.

I.

Proceeding pro se, respondent has filed numerous motions in this litigation, including a motion to strike petitioner's brief in the instant appeal, upon the grounds that: (1) the margins of petitioner's brief are in violation of Supreme Court Rule 344 (87 Ill. 2d R. 344); (2) no proof of service pertaining to petitioner's brief was received by respondent, also in violation of Rule 344; (3) a section of petitioner's brief does not fall within the headings allowed under Rule 341 (87 Ill. 2d R. 341); and (4) the petitioner's brief is not verified. This motion is denied.

Although adherence to the Rules is neces-

sary to the proper administration of the court's business, the alleged defects regarding petitioner's brief do not merit the serious sanction of striking the entire brief. In light of the fact that petitioner's brief is well within the page limitations set forth in Rule 341 (87 Ill. 2d R. 341), any irregularity of the margin size is insignificant. Further, neither the failure to send respondent a copy of the proof of service nor an improper section heading should be deemed fatal. Finally, there is no requirement that a brief must be verified.

II.

On the merits of her appeal, Respondent maintains that the circuit court's order of dissolution of marriage on grounds of mental cruelty amounts to an abuse of discretion. She notes that the petitioner was required to prove his own lack of pro-

vocation under the Illinois Marriage and Dissolution of Marriage Act ("Act"). (Ill. Rev. Stat. 1983, ch. 40, par. 401 (2).) Relying on this court's earlier opinion in Rosenbaum v. Rosenbaum, 38 Ill. App. 3d at 13, in which it was found that petitioner had neither alleged nor proven lack of provocation, respondent asserts that petitioner is barred by principles of res judicata and collateral estoppel from now proving his lack of provocation. In addition, respondent recites myriad allegations of petitioner's beating, abusing, threatening and cursing which she contends constitute provocation. Therefore, respondent argues that in view of our prior decision and her allegations of provocation, the circuit court's finding of mental cruelty and a lack of petitioner's provocation was an abuse of discretion.

Respondent's reliance on our prior de-

cision for res judicata or collateral estoppel effect is misplaced. It fails to take into consideration our more recent disposition in this case in a Supreme Court Rule 23 Order (87 Ill. 2d R. 23), Rosenbaum v. Rosenbaum (Docket No. 82-1790, December 28, 1982) in which we held, inter-alia, that petitioner was not precluded from proving grounds for dissolution by subsequent acts of respondent. Thus the circuit court did not err in allowing petitioner the opportunity to prove his case.

In reviewing the court's finding that petitioner did prove repeated acts of unprovoked mental cruelty, the finding is presumed to be correct and will not be set aside on review unless it is against the manifest weight of the evidence. (In re Marriage of Mitchell (1981), 103 Ill. App. 3d 242, 246; 430

EXHIBIT "A"

N.E. 2d 716; McGowan v. McGowan (1973) 15 Ill. App. 3d 913, 914; 305 N.E.2d 261.) Nevertheless, the judgment must be supported by positive evidence of conduct which causes embarrassment, humiliation and anguish so as to render life miserable. (McGowan v. McGowan, supra; Christian v. Christian (1979), 69 Ill. App. 3d 450; 387 N.E.2d 1254.) Here, petitioner's evidence of respondent's unfounded accusations, public confrontations, and harassing phone calls provides sufficient basis for the circuit court finding of mental cruelty. Further, petitioner's burden of proving his lack of provocation was a matter for the circuit court judge to determine. (Smith v. Smith (1977), 47 Ill. App. 3d 583, 586; 362 N.E.2d 123.) While this matter was bitterly contested, this court must not substitute its judgment for the judgment of the circuit court

judge absent an abuse of discretion. (In re Marriage of Jones (1980), 90 Ill. App. 3d 95, 96; 412 N.E.2d 1122; Smith v. Smith, supra.) A thorough review of the record on appeal in this case reveals no such abuse with respect to either the question of mental cruelty or the lack of provocation, and therefore, the judgment of dissolution cannot be reversed on this basis.

Several other arguments are raised by respondent with respect to the decree of dissolution. She maintains that the circuit court should not have considered the criminal complaints that she filed against petitioner as evidence of mental cruelty because she views the complaints as statements made in judicial proceedings which cannot form the basis of a cause of action. (McDavitt v. Boyer (1897), 169 Ill. 475; 48 N.E.317.) Fur-

ther, respondent contends that the petition for dissolution was not a legally valid complaint in that each count did not in itself state a cause of action (Herman v. Prudence Mutual Casualty Co. (1969), 41 Ill. 2d 468; 244 N.E.2d 809), and thus, should have been dismissed by the circuit court. Respondent also maintains that the court abused its discretion because the testimony upon which it based its decree was not credible. Finally, she asserts that the circuit court judges who were involved in this case were not sufficiently free of prejudice so as to allow them to rule impartially and according to law. Thus, respondent concludes that on these bases the circuit court's decree of dissolution of marriage was an abuse of discretion requiring reversal.

These additional attacks on the judg-

ment of dissolution are without merit. The petition for dissolution was a legally valid complaint for dissolution and property division, and the criminal complaints filed by respondent cannot be said to form the basis of petitioner's claim in light of the other evidence upon which to base the circuit court's finding of mental cruelty. Further, witness credibility was evaluated in the circuit court and will not be reevaluated by this court because the record does not disclose that the circuit court's findings were against the manifest weight of the evidence. (In re Marriage of Jones, supra; Tandy v. Tandy (1976), 42 Ill. App. 3d 87, 89; 355 N.E.2d 585.) The record also fails to reveal any prejudice on the part of the circuit court judges toward respondent, and therefore the judgment of dissolution cannot be disturbed on this

basis.

III.

Respondent's last argument on appeal is that the circuit court's property division and award of maintenance reflects an abuse of discretion. She identifies a variety of alleged abuses including the court's failure to enforce discovery, its refusal to consider an alleged oral contract, its failure to award her temporary alimony, a vacation, and funds for dental care, its failure to refer the parties to a reconciliation service, and its infringement on her right to cross-examine. Respondent contends that these abuses resulted in a property distribution which is unfair to her and contrary to law.

The standard of review of a property distribution is whether there has been an abuse of discretion such that no reasonable person could take the view of the

circuit court. (In re Marriage of Lee (1979), 78 Ill. App. 3d 1123, 1127; 398 N.E. 2d 126; In re Marriage of Cihak (1981), 92 Ill. App. 3d 1123, 1125; 416 N.E.2d 701.) In addition, appellate courts find that a just division of property does not require the property to be divided equally. (In re Marriage of Caldwell (1984), 124 Ill. App. 3d 898, 901; 465 N.E.2d 523; In re Marriage of Greenberg (1981), 102 Ill. App. 3d 938, 945-46; 429 N.E.2d 1334.) Here, a review of the record and the Circuit court's judgment reveals neither an abuse of discretion nor an unjust property division.

The record discloses that a vast amount of evidence was presented in the circuit court on financial matters, including evidence of the following: the assets of the parties at their separation; petitioner's provisions for the education, housing,

EXHIBIT "A"

medical and living expenses of the parties' children since the late 1960s; the assets the parties received from the partition of the marital home by a prior decree; respondent's income as a part-time teacher; petitioner's income; various bank accounts which petitioner held as trustee for the parties' children; the value of petitioner's co-op apartment; the value of petitioner's interest in the shopping center in which he had his optometry practice; petitioner's stock holdings; his bank accounts and certificates of deposit; the value of petitioner's office equipment and inventory; his automobile and personal effects; petitioner's retirement fund; life insurance policies; bonds; social security benefits; and inheritances.

The circuit court judgment states that it was rendered after a full consideration

of testimony, exhibits and argument. It makes detailed findings with respect to the aforementioned evidence and states that the court examined the evidence in light of the Act's guidelines for dividing property. (Ill. Rev. Stat. 1983, ch. 40, par. 503(d).) The court declared that it placed particular importance on the subsections of the Act pertaining to the contribution or dissipation of each party in the acquisition and retention of assets; the value of the property set aside for each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, employability, and needs of each spouse; the opportunity for future acquisition of assets; and the tax consequences of the property division. (Ill. Rev. Stat. 1983, ch. 40, par. 503 (d)(1)(2)(3)(7)(10)(11).) The evidence in this case revealed, and the circuit

court specifically found, that petitioner accumulated the bulk of his assets through his own efforts subsequent to the parties' informal separation in 1965, that since that time respondent has been self-sufficient, and that her health is good enough to allow her to continue to earn a living. In light of these factors, although the property division awards the majority of the property to petitioner, we are unable to find that no reasonable person could have found as the circuit court did.

With respect to respondent's specific allegations of abuses of discretion, we find that although production of certain objects of discovery may have been slow, it is evident that respondent ultimately received adequate production. Further, the record reveals that respondent's cross-examination of witnesses was curtailed by the court only after repeated admonish-

ments regarding relevancy. In addition, the circuit court was not bound to refer the parties to a reconciliation service particularly in view of the fact that they had not lived together since 1965. Finally, the court was not required to make any findings or provisions regarding alleged oral contracts, temporary alimony, vacations or dental care. (In re Marriage of Voight (1982), 111 Ill. App. 3d 623, 628; 444 N.E.2d 694.) Thus, a finding of abuse of circuit court discretion is not warranted in this case with respect to its property division ad award of maintenance.

For the foregoing reasons, the judgment of the Circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 5th day of March, 1985.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

EXHIBIT "A"

STATE OF ILLINOIS SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September, 1985.

Present: William G. Clark, Chief Justice

Justice Daniel P. Ward )
Justice Howard C. Ryan )
Justice Seymour Simon )
Justice Joseph H. Goldenhersh
Justice Thomas J. Moran
Justice Ben Miller

FILED: APPELLATE COURT, 1ST DIST. November 15,1985

C O P Y

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On the second day of October, 1985, the Supreme Court entered the following judgment:

No. 61917

Kurt Rosenbaum,
Respondent
v.
Jean Rosenbaum,
Petitioner

Petition for Leave to Appeal from Appellate Court, First District 1-84-0489

EXHIBIT "B"

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this twelfth day of November, 1985.

JULEANN HORNYAK, Clerk
Supreme Court of the State of
Illinois.

EXHIBIT "B"

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

JH/dem November 12, 1985

"Ms. Jean Rosenbaum
1354 W. Greenleaf St.
Chicago, IL. 60626"

C O P Y

THE COURT HAS TODAY ENTERED THE FOLLOWING

ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent, v.

Jean Rosenbaum, petitioner.

"Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion denied."

"Motion by petitioner, pro se, for an amended October 2, 1985 order. Motion denied."

"Motion by petitioner, pro se, for stay of mandate pending the timely filing and disposition of a petition for writ of certiorari in the United States Supreme Court. Motion denied."

"Motion by petitioner, pro se, for leave to file alleged political activity affidavit. Motion denied."

cc: Berman, Roberts & Kelly EXHIBIT "C"

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

November 18, 1985

C O P Y

Ms. Jean Rosenbaum
1354 West Greenleaf Street
Chicago, IL. 60626

"THE COURT HAS TODAY ENTERED THE FOLLOW-ING ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent,

v. Jean Rosenbaum, petitioner.

Motion by petitioner, pro se. for a supervisory order. Motion denied. Simon, J., took no part."

JH:sdl

cc Berman, Roberts & Kelly

EXHIBIT "D"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION.

| | |
|---|---|
| IN RE THE MARRIAGE OF | (ENTERED: |
| KURT ROSENBAUM, | December 16, |
| Petitioner, | 1983; |
| vs. | Judge Ryan.) |
| JEAN ROSENBAUM, | NO. 81 D 22050 |
| Respondent, | |
| acting Pro Se. | C O P Y |

JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE having been assigned for trial and having come on to be heard as a contested matter on the grounds for dissolution of the parties' marriage as alleged by KURT ROSENBAUM, petitioner, in his Petition for Dissolution of Marriage filed herein, and upon the response thereto of the respondent, JEAN ROSENBAUM, on all property rights arising out of this

marriage, and the court having heard the testimony of the parties and their respective witnesses over a period of sixteen months and having considered the exhibits introduced in evidence and the arguments of petitioner's counsel and of the respondent, pro se, and the court now being otherwise fully advised in the premises, FINDS AS FOLLOWS:

1. That petitioner, KURT ROSENBAUM, and the respondent, JEAN ROSENBAUM, were residents of the State of Illinois on the date this instant proceeding was commenced, and that each party has maintained their respective residences within this State for a period in excess of ninety (90) days immediately and continuously preceding the Findings made herein.

2. That the court has jurisdiction of the subject matter hereof and the parties hereto.

3. That the parties were lawfully joined

in marriage in Chicago, Cook County, Illinois on June 27, 1948.

4. That three children were born to the parties, namely: JAY ROSENBAUM, born August 3, 1949; RICHARD ROSENBAUM, born November 9, 1951; and JODY ROSENBAUM, born March 23, 1954, all of whom are emancipated. No children were adopted. The respondent is not now pregnant.

5. That the parties ceased cohabitating together as husband and wife in the Fall of 1965, and have not cohabitated as husband and wife since that date to the present time; the parties have been living separate and apart from one another since that time, without fault or provocation on the part of the petitioner.

6. The petitioner, KURT ROSENBAUM, has proved from the testimony of the parties, testimony of witnesses, and the demeanor and conduct of the respondent, by a preponderance of the evidence that respon-

dent, JEAN ROSENBAUM, has been guilty of extreme and repeated mental cruelty toward the petitioner without any reasonable cause or provocation on petitioner's part.

FACTS AND BACKGROUND

1. At the time of the separation of the parties in October, 1965, the parties had acquired assets through their joint efforts valued at approximately $35,000, exclusive of the marital home which was later sold and divided between the parties pursuant to court order. (See infra) Some of these assets were jointly held, such as the stock interest in the Keystone Funds, still retained in the joint names of the parties, while other assets were later dissipated and expended by the parties during their separation eighteen years ago for living expenses. At the time of separation, the financial interest and equity of the petitioner in the 53rd-

Woodlawn-Kimbark Shopping Center, Inc. was approximately $3,000 since the equity of the parties was then encumbered by substantial borrowings.

2. Almost all of petitioner's present assets were accumulated after the separation of the parties. It cannot be said, nor was it so proved, that the respondent contributed to the petitioner's acquisition of assets or made a significant contribution to raising the children and as a homemaker; actually, the youngest child, Jody, went to live with petitioner around 1968 at age 14. The court further finds that the conduct of the respondent substantially hindered the acquisition of assets by petitioner and caused him great emotional and mental distress, together with large financial expenses, including attorneys' fees incurred in this cause and prior actions.

3. Since 1965, petitioner has contri-

buted substantially all of the cost of education, housing, medical expenses, and living expenses of the three children of the parties and has, in addition, otherwise made a major contribution to their welfare and well-being, so that the children are today independent of the need of any finances from their parents. Respondent has not aided in this consequence.

4. Since the separation of the parties in October, 1965, respondent has supported herself through her own efforts, although petitioner paid the mortgage on the parties' house, paid some of her joint income tax liabilities over the years, and provided her with Blue Cross and Blue Shield medical insurance at a yearly cost of over $1,500.00. Petitioner has not paid respondent direct support for over ten years, nor has respondent, until recently and in this case, ever requested temporary maintenance, support and her

dental expenses, in any court proceeding.

5. The facts contained in the four opinions of the Illinois Appellate Court, First District, Rosenbaum v. Rosenbaum, 38 Ill. App. 3d 1; 349 N.E.2d 73 (1976); 65 Ill. App. 3d 228; 382 N.E. 2d 270 (1978); 94 Ill. App. 3d 352 (1981), Order Disposing of Appeal Under Supreme Court Rule 23, No. 82-1790, December 28, 1982, and those presented here at the trial of this cause confirm these findings and provide a factual background of which this court takes judicial notice. This cause is singularly unique and unprecedented because of the facts contained in those appeals, the over 18 year separation of the parties, respondent's pro se representation, the large amount of hours she has and does expend on this cause, the number and nature of the contested issues, the constitutional arguments raised, and the myriad matters presented to the court,

especially by respondent.

6. Respondent, in addition to being self-supporting because of her earnings as a part-time teacher with the Chicago Board of Education of approximately $8,000 per year gross income, has income from property distributed to her through a prior decree of partition in which she received the approximate sum of $20,000.00, which according to the testimony has now grown to the approximate sum of $32,000, and has inherited property from both her Aunt and Mother; the respondent thus has substantial assets in her own name totaling approximately $66,000.00. Respondent also has acquired furniture, furnishings, clothing and personal effects over the pre and post separation years.

7. Furthermore, as noted above, respondent has and does spend an extremely large amount of time on this case including her appeals representing herself pro se, and

in pursuing petitioner at his office, on the telephone and at the tennis court before enjoined by order of court, but with the entry of a final order in this cause, she will undoubtedly have substantial free time to pursue her livelihood and to increase her earnings.

8. Property owned by the children of the parties, or in which they are the beneficial owners, include the following:

8.1: Talman Home Federal Savings & Loan Association, petitioner custodian for Jody Rosenbaum ($10,349.65) and for Jay Rosenbaum ($10,782.73).

8.2: American National Bank & Trust Company of Chicago, petitioner Trustee for Jody Rosenbaum ($22,337.38).

8.3: Bank of Commerce & Industry, petitioner Trustee for Jody, Richard and Jay Rosenbaum ($11,114.00)

8.4: Calumet National Bank, petitioner, as Trustee for Jay Rosenbaum, Richard

Rosenbaum, and Jody Rosenbaum, Jan. 10, 1983 ($30,000).

8.5: The Boatmen's National Bank of St. Louis, petitioner Trustee for Jay, Richard or Jody Rosenbaum, Feb. 18, 1983, ($65,268.22).

8.6: Amalgamated Bank, parties are Trustees for children ($2,323.57).

9. Property of the petitioner acquired in the above described partition proceeding was approximately $30,000.00 and, together with interest earned thereon to-date at the Calumet National Bank and transferred to the Stein Roe & Farnham Bond Fund is at least $46,711.43, which is non-marital, having been previously distributed pursuant to order or court. (See Rosenbaum v. Rosenbaum, 65 Ill. App. 3d 228.) Petitioner also inherited 892.34 British pounds on deposit at Britiannia Building Society in England valued at about $1,338.

10. Property acquired and owned by the petitioner either in his own name or jointly with one or more of the children of the parties deemed "marital property" includes the following assets and evaluations, established by competent evidence before this court over the course of this lengthy proceeding, thus rendering the evaluations only approximately at given points of time:

10.1: Cooperative at 1200 East 53rd Chicago, Illinois, ($18,000).[1]

10.2: Apartment 9F, co-op at 5532 South Shore Drive, Chicago, Illinois, ($37,500).

10.3: NCR Corp., 11.11 shares common stock, value ($1,375).

10.4: Bache Co. stock report, September 30, 1982, value ($7,464.46).

10.5: University National Bank, checking account averaging $5,000, and $10,000

1/ Shopping Center business property.

C.D., 5/26/81.

10.6: First Chicago T-Rate C.D.s, ($15,014.17), 6/83 ($13,216).

10.7: State of Israel bond, face value $100, November, 1973.

10.8: Consolidated Unit Investment Trust and Accumulation Program, March 15, 1983, ($741.78).

10.9: Merrill Lynch account June 24, 1983, ($35,269.00) and bond due October, 1997, ($5,161.11).

10.10: Boatmen's National Bank of St. Louis, checking account, ($870.57).

10.11: Boatmen's National Bank of St. Louis, C. D. for ($10,000).

10.12: Continental-Illinois National Bank, ($25,000).

10.13: Hyde Park Bank, C.D. ($10,000).

10.14: Allanson Associates, Ltd., ($5,290).

10.15: Michigan Avenue National Bank, C.D. Feb. 4, 1983, ($16,200.00).

10.16: Account receivable from Richard Rosenbaum ($11,000).

10.17: Exchange National Bank ($140.00).

10.18: Office equipment and inventory of optometry practice ($3,000).

10.19: Hyde Park Federal ($941.00).

10.20: 1979 Buick automobile ($2,750).

10.21: Furniture, furnishings, appliances, paintings, clothing and personal effects ($2,000.00).

10.22: Stein Roe & Farnham Bond Fund ($50,443.00).

10.23: Rosenbaum optometry practice - value minimal.

10.24: American Optometric Association Retirement Fund (gross value before income taxes payable on distribution ($104,000.00), and First National Bank of Chicago IRA account ($2,432.00) (Par. 16 infra).

10.25: Other property supposedly owned by petitioner has been alluded to in the

trial of this cause but has not been established by competent evidence; the court finds from the evidence presented that those assets are inconsequential in view of petitioner's overall total accumulated asset picture and the conclusion, stated below, that he should retain most of these assets acquired and accumulated by him alone through his sole efforts and in spite of hinderance from respondent.

11. Property owned jointly by the parties includes the Keystone Custodian Funds having an approximate market value $50,000; over the years petitioner has paid the income tax liability for income on Keystone and, perhaps, an interest in Amalgamated Bank account ($2,323.57) (Par. 8.6 supra).

12. Petitioner is presently 70½ years of age and appears to be in reasonably good health.

13. Respondent is 62 years of age and

notwithstanding her claims of infirmities, appears to be in reasonably good health, traveling approximately 20 miles each way from Rogers Park to Hyde Park on public buses many times during the year and almost weekly in summer. The court notes her rigorous and vigorous representation of herself and her own interest in this case before the court for the past one and one-half years.

14. Respondent, upon her retirement, will be the beneficiary of the Teachers' Retirement System Pension Fund and will receive about $160.00 per month and will be eligible for Social Security benefits as a divorced person and at age 65 will be receiving over $400 per month for Social Security benefits.

15. Respondent has acquired through two inheritances, and as a result of the division of property in the partition suit and the investment of these funds,

the approximate sum of $66,000.00 considered herein as her separate property.

16. Petitioner is the current recipient of a pension from the European Pension Fund which he earned prior to the marriage of the parties during the beginning of World War II. This is approximately $300 per month which he has been receiving since 1977. The accumulated amount of this pension, deemed non-marital property, is about $20,000, plus accumulated interest thereon. Petitioner also receives (a) the maximum social security benefits of roughly $828 per month, and (b) will be receiving a pension from the American Optometric Association Retirement Fund (AOA) valued at the time of trial at approximately $104,000.00 but which is taxable to him and must be paid out to him over a period of ten years, plus (c) a taxable IRA account at the First National Bank of Chicago, established in 1981, having an

approximate value of $2,432.00. Both the AOA and IRA were acquired by petitioner on his earnings subsequent to the separation of the parties in 1965.

17. The net current income of the petitioner for the years 1980 through 1982 based upon the testimony and his federal income tax returns admitted into evidence is approximately $16,000 per year, after payment of federal and state taxes and pension contributions.

18. The net income of the respondent for the years 1980 through 1982 based upon her testimony and her federal and state income tax returns introduced into evidence is, after taxes, approximately $11,775.00.

19. The optometry practice of the petitioner has a minor, or minimal value. Petitioner testified early in the trial that he has been trying to sell his practice but without success. In view

of petitioner's age and his income from pensions, the court finds his testimony that he desires to sell his practice and retire believable but the court concludes that the practice of the petitioner is essentially a personal service business having only a minimal value to the average purchaser. See In re Marriage of Greenberg, 102 Ill. App. 3d 938; 429 N.E. 2d 1335 (1st Dist. 1981).

20. Since 1965 respondent has maintained the standard of living which she presently has today. Her standard of living has not diminished throughout the years of separation, nor has it improved. Respondent has substantial savings from her personal acquisitions and through inheritances. The standard of living of the parties at the time of separation does not appear to be materially different than respondent's present living standard.

21. Other than mortgage encumbrances on the cooperative ownership of the petitioner in the Promontory Apartments Trust and a mortgage on 53rd Woodlawn-Kimbark Shopping Center, a debt of $4,000 to the Internal Revenue Service, substantial attorneys' fees paid and to be paid in an amount in excess of $10,000, and respondent's dental bill, there are no material marital debts at this time.

22. From the above properties, that which is clearly non-marital includes the Talman Home Federal accounts held as custodian for two children (par.8.1). Other property held by petitioner as Trustee for children -- American National, Bank of Commerce and Industry, Calumet National Bank, Boatmen's National Bank (pars. 8.2, 8.3, 8.4, 8.5 and 8.6) is found to be marital for purposes of this judgment. However, assets from partition proceedings of about $46,711.48, which includes funds on

deposit at Calumet National Bank and part of Stein Roe & Farnham account, which are included in paragraphs 8.4 and 9 are non-marital and belong to petitioner, as do pension benefits commingled in petitioner's own accounts of about $20,000 from his European Pension (par. 16 supra) and the Britiannia Building Society account with balance of 892.34 British pounds.

23. Respondent has about $66,000 of non-marital property acquired by her either through inheritance or as a result of the prior division of the assets of the parties in the partition proceedings, and interest earned thereon. (Par. 15 supra).

CONCLUSIONS OF LAW

1. Under Section 503 of the Illinois Marriage and issolution of Marriage Act (IMDMA), the court concludes that the property described in paragraphs 22 and

23, supra, is non-marital, since it was acquired by gift, bequests, devise or descent under Section 503(a)(1) or prior to marriage 503(a)(3), or has been acquired by judgment, under 503(a)(7).

2. In dividing the marital property of the parties, the court has examined the facts and circumstances in this case as it relates to the guidelines set forth in Section 503(d), with particular emphasis on Sections (1) (2) (3) (7) (10) and (11); however all of the subsections of (d) are part of the considerations of this court in reaching its conclusions.

3. Each party will retain all non-marital assets as his or her own property.

4. Those assets being held by petitioner as custodian for the children are deemed to be assets of the children and not of the petitioner. The court notes that of those assets held by the petitioner as trustee for the children, which

includes part of the deposits at the Calumet National Bank and Stein Roe & Farnham Bond Fund totaling approximately $46,711.43, are non-marital assets, being the result of the judgment for partition, and the interest earned on those funds is likewise non-marital. (For purposes of division of property, all other assets held by petitioner as trustee for one or more of the children are found to be marital). Further, about $20,000 of petitioner's assets are the accumulation of the German Pension Fund proceeds and are non-marital.

5. This case is most unusual as a consequence of the long separation of the parties of approximately 18 years which is strikingly similar, while not quite the same, to actual legal separation under Illinois law, and the acquisition of assets by the petitioner without any significant contribution on the part of the respondent. Quite to the contrary, the

detrimental effect of the respondent's conduct on the petitioner's acquisition and retention of assets, together with harassment and mental stress, embarrassment and anguish of petitioner, has hindered and frustrated the accumulation of assets by petitioner.

6. Since the marital assets of the parties at the time of the separation were relatively small, and the joint tenancy property of the parties will give each of the parties $25,000 of Keystone Fund Stock, the court is confronted with either a division of assets by the transfer of funds from the petitioner to the respondent, or, in the alternative, or in addition, permanent maintenance to the respondent for the remaining years of her life. The court notes that the respondent is near the age of retirement so that she will no longer be earning the income heretofore received as a school teacher by the

Chicago Board of Education, but that upon the conclusion of this litigation, she will have significantly more time in which to earn a living from teaching or from some other endeavor. Respondent will also be receiving a pension from the Teachers' Retirement System of $160.00 per month or $1,920.00 per year. The court also observes that the respondent has, and will have by virtue of this judgment, assets approaching $150,000, and that she has in the past two years according to her Federal Income tax returns earned approximately $6,500.00 a year from unearned income which the court reasonably anticipates will continue in the future. Upon the conclusion of this proceeding, one half of the Keystone Fund stock and the Amalgamated Bank account, and the interest which will be earned thereon, will inure to the respondent. This should give her additional income at 10% per

annum of approximately $2,500.00, thus placing the combined unearned and pension income of the respondent at about $11,000 a year without an award of property upon which she can earn further income and the further order of permanent maintenance.

7. It is concluded that the respondent has not materially improved upon her standard of living since the separation of the parties in 1965 and also since the sale of the marital home through the partition proceedings in 1977 and 1978.

8. Petitioner shall make the respondent the irrevocable beneficiary of two of his life insurance policies, one with Mutual Benefit for $5,000 and the other with New England Life for $10,000, so that in the event of his death, respondent will have additional assets. Petitioner shall pay the premiums on these policies. It is noted that the petitioner's life expectancy at age 70 is substantially less

than the respondent's at age 62.

9. In view of the substantial assets of the petitioner, the exact amount of which cannot be precisely determined in part due to the length of these proceedings and the fluctuating asset values at various times over the months of trial and the minimal contribution of respondent, petitioner is directed to turn over to the respondent a sum of money which will add to her capital and compensate her for any contribution she has made to this marriage prior to the separation of the parties in the Fall of 1965, in the amount of approximately twenty percent of marital assets in his name or control of $60,000.00.

10. In addition, because these assets may not be sufficient for the respondent to maintain the standard of living to which she has become accustomed and to pay her own medical insurance, and in

light of her health, age, and reasonable needs (although the court concludes that she should receive at least $14,000 a year of income frpm her investments assuming that the respondent maintains the same diligent investment policy for her funds and moneys awarded herein that she seens to have followed in the past), petitioner shall pay to the respondent $500.00 per month on the first of each month for four years (or forty-eight months) and $350.00 per month thereafter until her death, or that of petitioner, as and for permanent maintenance which shall be taxable to her and deductible to petitioner on his income tax returns. All motions for temporary and for permanent maintenance and for payment of dental and other bills will be denied.

11. The parties have also acquired certain household furniture, furnishings, jewelry and personal effects. While the

values of these items has not been precisely proven, it appears that the retention of such items by each party is fair and reasonable.

12. That the court has considered all the facts and circumstances present in this case in accordance with Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That a Judgment Of Dissolution of Marriage be and the same is hereby awarded both of the parties hereto and, accordingly, the bonds of matrimony previously existing between petitioner, KURT ROSENBAUM, and respondent, JEAN ROSENBAUM, shall be and the same are hereby dissolved, extinguished and forever terminated, and the parties are and each of them is free from the obligations thereof.

B. That petitioner, KURT ROSENBAUM, is hereby assigned and awarded the following as his separate, non-marital property having the approximate evaluations indicated, all of which property is in the name of petitioner solely or with one or more of the children of the parties, and is awarded all right, title and interest therein:

(1) The 1979 Buick automobile in his possession and control valued at $2,750.

(2) All of the household furniture, furnishings, appliances, fixtures and contents of the residence located at 5532 South Shore Drive, Chicago, Illinois.

(3) Shares in cooperative at 1200 East 53rd Street, Chicago, Illinois, $18,000.

(4) Apartment 9F, co-op at 5532 South Shore Drive, Chicago, Cook County, Illinois, $37,500.00.

(5) NCR Corp., 11.11 shares common stock, value $1,375.

(6) Bache Co. stock report, September 30, 1982, value $7,464.46.

(7) University National Bank, checking account averaging $5,000, and $10,000 C.D. 5/26/81.

(8) First Chicago T-Rate C.D., $15,014.17, 6/83.

(9) State of Israel bond, face value $100, November 1973.

(10) Consolidated Unit Investment Trust and Accumulation Program, March 15, 1983, $741.78.

(11) Merrill Lynch account, June 24, 1983, $35,269.00 and bond due October, 1997 for $5,161.11.

(12) Boatmen's National Bank of St. Louis, checking account, $870.57.

(13) Boatmen's National Bank of St. Louis, C.D. for $10,000.

(14) Continental Illinois National Bank, $25,000.

(15) Hyde Park Bank, C.D. $10,000.

(16) Allanson Associates, Ltd., $5,290.

(17) Michigan Avenue National Bank C.D. Feb. 4, 1983, $16,200.00.

(18) Account receivable from Richard Rosenbaum, $11,000.

(19) Exchange National Bank, $140.

(20) Office equipment and inventory of optometry practice, $3,000.

(21) Hyde Park Federal, $941.

(22) Stein Roe & Farnham Bond Fund, $50,443.

(23) Rosenbaum optometry practice - value of minimal.

(24) American National Bank & Trust Company of Chicago, petitioner Trustee for Jody Rosenbaum, $22,337.38.

(25) Bank of Commerce & Industry, petitioner Trustee for Jody, Richard and Jay Rosenbaum, $11,114.00.

(26) Calumet National Bank, petitioner, as Trustee for Jay Rosenbaum, Richard Rosenbaum, and Jody Rosenbaum,

Jan. 10, 1983, $30,000.

(27) The Boatmen's National Bank of St. Louis, petitioner Trustee for Jay, Richard or Jody Rosenbaum, Feb. 18, 1983, $65,268.22.

(28) American Optometric Association Retirement Fund and First National Bank of Chicago IRA account.

(29) First National Bank of Chicago IRA account.

(30) Any other stocks, bonds, bank accounts, pensions, IRA account, or certificates of deposit in the name of petitioner and acquired after the separation of the parties.

C. That the respondent, JEAN ROSENBAUM, be and she is hereby awarded as her sole and separate property all property and personal effects presently in her possession and control (including stocks, bonds, certificates of deposit and bank accounts), together with her

pension in the Teacher's Retirement System.

D. That petitioner, KURT ROSENBAUM, shall be solely responsible for the payment of the following outstanding liabilities, and he shall indemnify and hold respondent absolutely safe and harmless therefrom:

(1) Any lien or mortgage on the property at 5532 South Shore Drive, Chicago, Illinois.

(2) Any lien or mortgage on the cooperative at 1200 East 53rd Street, Chicago, Illinois.

(3) Petitioner's attorneys' fees and costs incurred herein.

(4) Any Federal or State of Illinois income tax liability on his separate returns.

E. That commencing on December 1, 1983, petitioner, KURT ROSENBAUM, shall pay the respondent, JEAN ROSENBAUM, the unallocated sum of $500.00 per month for four years and $350.00 per month there-

after until death of either petitioner or respondent as and for his contribution to the support, reasonable needs and maintenance of respondent until she remarries or until the death of either petitioner or respondent.

F. That petitioner shall maintain $10,000 and $5,000 insurance policies on his life, and he shall designate the respondent as irrevocable beneficiary and pay all premiums for these policies and exhibit proof of payment to respondent each year.

G. The parties shall divide equally the Keystone Fund stock and the Amalgamated Bank account in their joint joint names or as joint trustees for the children.

H. Petitioner shall pay to respondent within 30 days of the judgment herein the sum of $60,000 from his separate property, from which sum respondent

shall be responsible for her dental and other bills incurred by her.

I. All pending motions of respondent for temporary and permanent maintenance, for payment of dental and other bills, for further discovery, and other pending open motions are denied (as).[2]

K. Each of the parties is hereby ordered to execute such deeds, assignments or other documents which may be necessary or required to effectively vest sole and exclusive title in any of the above property in the other party.

L. That any further right of claim by either party against the other for spousal maintenance and support be and the same are hereby barred, extinguished

2/ There is no paragraph (J) in the Judgment of Dissolution of Marriage.

and forever terminated.

K. That this court retains continuing jurisdiction of the parties hereto and the subject matter hereof for purpose of enforcing the provisions of this Judgment.[3]

DATED:

ENTER:

Daniel Ryan
JUDGE

No. 83 D 1541906

[3]/ There are two paragraphs "K" in the Judgment of Dissolution of Marriage.

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.

COUNTY DEPT. DOMESTIC RELATIONS DIV.

| | | |
|---|---|---|
| IN RE THE MARRIAGE OF | ) | |
| | ) | |
| KURT ROSENBAUM, | ) | |
| | ) | |
| Petitioner | ) | |
| | ) | |
| and | ) | NO. 81 D 22050 |
| | ) | |
| JEAN ROSENBAUM, | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | C O P Y |
| acting Pro Se | ) | |

ORDER

This cause coming on to be heard this day upon Jean Rosenbaum, Respondent's MOTION FOR DECLARATORY JUDGMENT, and the Court having been advised in the premises; IT IS HEREBY ORDERED:

1. The Motion for Declaratory Judgment is denied.

2. The next hearing date is set for October 1, 1982 at 9:30 AM.

ENTERED: Sept. 8, 1982

JUDGE RYAN

A.(103)

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.

COUNTY DEPT., DOMESTIC RELATIONS DIV.

| | | |
|---|---|---|
| IN RE THE MARRIAGE OF | ) | |
| | ) | |
| KURT ROSENBAUM, | ) | |
| | ) | |
| Petitioner | ) | |
| | ) | |
| and | ) | NO. 81 D 22050 |
| | ) | |
| JEAN ROSENBAUM, | ) | |
| | ) | C O P Y |
| Respondent, | ) | |
| | ) | |
| acting Pro Se | ) | |

STIPULATION

This cause coming on to be heard this 10th day of March, 1983 upon trial, the parties hereto stipulate as follows:

The City Savings Association has paid directly to Kurt Rosenbaum all sums mentioned "paid" in its communications to Kurt Rosenbaum and Jean Rosenbaum, and he has received same.

(Signature)
Edward A. Berman, acting for Petitioner

(Signature)
Jean Rosenbaum, Respondent, Pro Se

ENTERED: March 15, 1983, Judge Ryan.

## U. S. CONSTITUTIONAL PROVISIONS INVOLVED

### AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### AMENDMENT V.

No person shall be held to answer for a

capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

The powers not delegated to the United States by the Constitution, nor prohibited

by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES INVOLVED.

The following Federal Statutes pertain to Social Security benefits accruing to ..

"42 USCA 402(b)(1). The wife (as defined in section 416(b) of this title) and every divorcedwife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife --"*

*NOTE: The divorced Wife must meet certain specified criteria; however a 1985 recent Amendment to the foregoing states:

"42 USCA 402(5)(A). Notwithstanding the preceding provision of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife --

(i) meets the requirements of sub-paragraphs (A) through (D) of paragraph (1) and
(ii) has been divorced from such in-

sured individual for not less than two years, shall be entitled to a wife's insurance benefits under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

"(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual."

"42 USCA 416, (c)(1). The term 'divorced wife' means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective."

STATE OF ILLINOIS STATUTES INVOLVED.

Ill. Rev. Stat. (1983), Ch. 40.

(RE: P.A. 83-954)

"Sec. 401. Dissolution of Marriage.

The court shall enter a judgment of dissolution of marriage if at the time the action was commenced, one of the spouses was a resident of this State or was stationed in this State while a member of the armed services, and the residence or military presence had been maintained for 90 days next preceding the commencement of the action or the making of the finding; and if one of the following grounds for dissolution has been proved:

"(1) That without cause or provocation by the petitioner, the respondent was at the time of such marriage, and continues to be naturally impotent; or the respondent had a wife or husband living at the time of such marriage; or the respondent had committed adultery subsequent to the marriage, or has wilfully deserted or absented himself or herself from the petitioner for the space of one year, including any period during which litigation may have pended between the spouses for dissolution of marriage, or legal separation, or has been guilty of habitual drunkenness for the space of 2 years, or has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years, or has attempted the life of the other by poison or other

means showing malice, or has been guilty of extreme and repeated physical or mental cruelty, or has been convicted of a felony or other infamous crime or has infected the other with a communicable venereal disease. 'Excessive use of addictive drugs', as used in this Section, refers to use of an addictive drug by a person when using the drug becomes a controlling or a dominant purpose of his life; or

"(2) That the spouses have lived separate and apart for a continuous period in excess of two years and irreconcilable differences have caused the irretrievable breakdown of the marriage, and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not in the best interests of the family; provided that if the spouses have lived separate and apart for a continuous period of not less than 6 months next preceding the entry of the judgment dissolving the marriage, as evidenced by testimony or affidavits of the spouses, the requirement herein of living separate and apart for a continuous period in excess of 2 years may be waived upon written stipulation of both spouses filed with the clerk of the court.

"Such judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property. The court may bifurcate the judgment for dissolution and

reserve questions of child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property regardless of whether (i) the court has in personem jurisdiction over the respondent, or (ii) one of the parties would be unable to pay child support or maintenance if so ordered, or (iii) the court has set aside an adequate fund for child support pursuant to subsection (d) of Section 503, or (iv) the child or children of the parties do not reside with either parent.

"The death of a party subsequent to entry of judgment for dissolution but before judgment on reserved issues shall not abate the proceedings.

"If any provision of this Section or application thereof shall be adjudged unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect or invalidate any other provision or application of this Section, which shall remain in full force and effect."

(Again amended later by several other amendments.)

"Sec. 402. Legal Separation. (a) Any person living separate and apart from his or her spouse without fault may have a remedy for reasonable support and maintenance while they so live apart.

"(b) Such action shall be brought in the circuit court of the county in which the respondent resides or in which the parties last resided together as husband and wife. In the event the respondent cannot be found within the State, the action may be brought in the circuit court of the county in which the petitioner resides. Commencement of the action, temporary relief and trials shall be the same as in actions for dissolution of marriage.

"(c) A proceeding or judgment for legal separation shall not bar either party from instituting an action for dissolution of marriage, and if the party so moving has met the requirements of Section 401, a judgment for dissolution shall be granted. (Amended by P.A. 82-716, §1, eff. July 1, 1982. )"

"Sec. 503. Disposition of Property. (d) In a proceeding for dissolution of marriage or declaration of invalidity of of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

(1) the contribution or dissipation of each party in the acquisition, preservation, or depreciation or appreciation in value, of the marital and non-marital property, including the contribution of a spouse as a homemaker or to the family unit;

(2) the value of the property set apart to each spouse;

(3) the duration of the marriage;

(4) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(5) any obligations and rights arising from a prior marriage of either party;

(6) any antenuptial agreement of the parties;

(7) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(8) the custodial provisions for any children;

(9) whether the apportionment is in lieu of or in addition to maintenance;

(10) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(11) the tax consequences of the property division upon the respective economic circumstances of the parties.

(e) Each spouse has a species of common ownership in the marital property which vests at the time dissolution proceedings are commenced and continues only during pendency of the action. Any such interest in marital property shall not encumber that property so as to restrict its transfer, assignment or conveyance by the title holder unless such title holder is specifically enjoined from making such transfer, assignment or conveyance.

(f) A transfer of marital property from one spouse to another in acknowledgement of their respective contributions to the accumulated marital estate, either by agreement or by order of court, is a division of the common ownership of marital property. Such transfer is not a taxable event.

(g) The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent or incompetent child of the parties.

(h) The court may make such judgments affecting the marital property as may be just and may enforce such

judgment by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court.

(i) Unless specifically directed by a reviewing court, the court shall not on remand consider any increase or decrease in the value of any 'marital' or 'non-marital' property occurring since the assessment of such property at the original trial or hearing, but shall use only that assessment made at the original trial or hearing."

"Amended by P.A.82-783, Art. III, § 23, eff. July 13, 1982; P.A. 83-129, § 1, eff. August 19, 1983; P.A. 83-388, § 36, eff. Sept. 16, 1983; P.A. 83-563, § 1, eff. Jan. 1, 1984; P.A. 83-564, § 1, eff. Jan. 1, 1984."

"Sec. 1001. Married women may sue and be sued--Attachment or judgment. § 1. A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person committed during coverture, other than an intentional tort. ...."

"Sec. 1007. A married woman may receive, use and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors."

EXCERPT FROM ILLINOIS OFFICIAL MICROFILM COPY OF TRANSCRIPT OF PROCEEDINGS BEFORE SENATE COMMITTEE RE P. A. 83-954.

(Third Reading) 5/27/83

SENATOR MAROVITZ: "What happens today ... they have to file a complaint putting the fault grounds ... specifying the fault grounds, then they have to testify in open court with a court reporter as to what specific fault grounds there are. In many cases, they perjure themselves on the stand in order to find fault grounds, when in fact, they just want to get out. This (P. A. 83-954) would allow people to .. to amicably part without saying, I have done nothing wrong in this marriage, my spouse has done everything wrong in this marriage. This doesn't affect property at all or property distribution at all."

PARTIAL TRANSCRIPT OF A PROCEEDING BEFORE PRE-TRIAL JUDGE BUCKLEY, REPORT OF PROCEEDINGS, pp. 45-49.

Mrs. Rosenbaum: Q. "When your wife calls do you listen patiently to what she says or do you constantly interrupt so she cannot get a word in edgewise, express her thoughts, and then hang up so she is forced to call in order to make some kind of point or ask some kind of question? ....."

Kurt Rosenbaum: A. "If the question is relevant to whatever happened I would answer the questions ....."

Mrs. Rosenbaum: Q."Is your wife employed?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Are you aware that your wife is employed and there is one phone available to her usually; in school she is confined to a classroom most of the time?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Who decides if what she says is relevant or not?"

Kurt Rosenbaum: A. "I decide, obviously."

Mrs. Rosenbaum: Q. "Is she unable to make any decisions with respect to anything by herself?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Half the time you don't even know what the question is?

Kurt Rosenbaum: A. "Yes." OBJECTION.

Mrs. Rosenbaum: Q. Well, how can you know if it is legitimate or not if you don't listen?" OBJECTION.

Court: "Go on to another --"

Mrs. Rosenbaum: Q. "Has your wife told you that she has encountered an individual in the anteroom of the court, or one in the office of the Board of Education; that what is requested is that she ask you certain questions which they hint at but do not actually --?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Have you for many years labeled any questions or request on your wife's part relating to family business, none of her business and totally irrelevant, and goofy and crazy, and the whole bit?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Are you aware of your wife's physical condition?"

Kurt Rosenbaum: A. "Yes, you mentioned it several times."

Mrs. Rosenbaum: Q. "What is your wife's physical condition?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Have you instructed your employees to hang up on your wife

when she calls and leaves a message?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "How many times since you have departed from the family home have you responded to the messages you should call her?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "I also wish to ask does your wife have your home telephone number to discuss family matters with you?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Do you believe a mother and wife should be entitled to get information about the family, or reports sometimes?"

Court: "Where is this on the trial call? ..... I am going to enter a preliminary injunction preventing you from phoning him at the office."

Mrs. Rosenbaum: My daughter has just been in the hospital; my son newly married. He didn't tell me about it. I am entitled to certain family information. He hasn't shown me the wedding pictures ....".

Court: "And I am telling you, you are enjoined from calling him at the office and it you harass him, I will send you to jail. ....."

Mrs. Rosenbaum: "May I say one thing?"

Court: "No, call the next case."

IN RE MARRIAGE OF GREENBERG

(102 Ill. App. 3d 938)

Excerpts from Headnotes

(First District, 1981)

Headnote 1: Trial court's award of temporary maintenance of 20 per cent of husband's net monthly earnings to wife was not an abuse of discretion in marriage dissolution proceedings upon consideration of the fact that wife was earning far less than husband and living at standard below husband and below standard which she enjoyed during marriage, albeit she was neither destitute or unemployed.

Headnote 2: Wife's affidavit detailing projected rather than actual expenses and her ownership of stock did not demonstrate discrepancy or establish financial independence as would render temporary maintenance award abuse of discretion, in marriage dissolution

proceedings in which trial judge was in best position to determine credibility of wife's contention that estimated expenses would shortly become actual.

Headnote 5: Trial court's award to wife of over half of parties' marital property manifested proper exercise of discretion in marriage dissolution proceedings as fair and reasonable apportionment in accord with statutory guidelines under evidence (Ill. Rev. Stat. 1979, ch. 40, par. 503).

Headnote 7: Trial court's order that father pay support and education expenses for 20-year-old daughter, notwithstanding her corporate stock ownership, was not abuse of discretion in marriage dissolution proceedings, where proofs established father's superior financial position to either mother or daughter ..... .

KURT ROSENBAUM, Plaintiff-Appellee, v. JEAN ROSENBAUM, Defendant-Appellant

(38 Ill. App. 3d 1, 1st Dist. 1976)

Excerpts from Headnotes

Headnote 2: In divorce case on ground of mental cruelty, whether or not there was provocation is relevant in determining whether plaintiff proves his case and where grounds for divorce are physical or mental cruelty, provocation is not affirmative defense and its presence is proof that element of plaintiff's prima facie case, namely cruelty, does not exist.

Headnote 3: Unilateral judgments of plaintiff disclaiming responsibility for wife's medical bills and telling her to pay for her own expenses because he would no longer contribute to her support were not justified by evidence in record.

Headnote 5: Death of marriage, and fact that parties would never again live as

husband and wife, do not entitle either to a divorce.

Headnote 7: In law, each count of complaint is separate and should in itself state a complete cause of action.

Headnote 8: Where complaint contains separate counts, there should be findings as to each count with separate judgment entered on each.

QUOTATION FROM ROSENBAUM V. ROSENBAUM (cited supra), pp. 8-9. etc.

"It was also proved that in his first divorce suit, the one decided against him, Dr. Rosenbaum had alleged that he was living separate and apart from his wife as a single man without fault on his part. In the trial of this case, his lawyer conceded that the first suit adjudicated all the issues between the parties. One of the issues in that case was whether, as he had alleged, Dr. Rosenbaum was living separate from his wife without fault on his part. The same issue was submitted in this case when Dr. Rosenbaum made the same allegation and it was denied by Mrs. Rosenbaum. Therefore, from his explanation of why he left his home, and from the conceded effect of the prior adjudication, the question arises whether Dr. Rosenbaum left his family without a valid reason, and

thus provoked the acts of his wife about which he now complains. This question must be answered from the evidence in the record bearing in mind that he had raised it before in a case that went against him (citation). In a divorce case, whether there was or was not provocation is relevant in determining whether a plaintiff proves his case .... A divorce suit plaintiff who charges mental cruelty must allege and prove that he did not provoke the acts and conduct about which he complains.

Page 10. "After the children left their mother and went to live with him, Dr. Rosenbaum decided that he was no longer responsible for any part of the utility bills on the family home. He wrote a letter to his wife's doctor disclaiming responsibility for her medical bills. He wrote a note to Mrs. Rosenbaum telling her that she had to pay for her own expenses because he would no longer contribute to her support. We have examined the evidence, and find no justification for these unilateral judgments by Dr. Rosenbaum concerning his wife's duty and ability to bear part of the family expenses at one time and all of her support at another. It is true she was a part-time teacher and had some money of her own. But the duty of a husband to support his wife is imposed by law, Lyons v. Schanbacher, 316 Ill. 569; Vock v. Vock, 305 Ill. 432.

Page 13. "We are convinced that Dr. Rosenbaum did not prove .... lack of provocation. From his testimony .... he left his family without a valid reason. The institution of marriage would not exist in our society, if every husband were free to decide for himself that preservation of his sanity, whatever that means, requires that he leave his wife and children. ..... His income has progressively increased. His interests in matters vocational and avocational have not changed or diminished ..... From everything she (Wife) has filed here and below, there exudes a deep sense of indignation of her husband's desertion of her, his construction of her reactive conduct as mental cruelty, and his success in using that construction to obtain a divorce on terms that deprive her of benefits she claims should be hers after 27 years of marriage. ..... Therefore, we conclude that the Judgment granting Dr. Rosenbaum a divorce on grounds of mental cruelty was contrary to the manifest weight of the evidence (citations)."

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

AFFIDAVIT OF JEAN ROSENBAUM

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the petitioner, acting Pro Se in the aforestated cause, that she has read the foregoing APPENDIX to JURISDICTIONAL STATEMENT by her submitted for filing, that she knows the contents thereof, and the same is true in substance and in fact.

JEAN ROSENBAUM, Pro Se *
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 30th day of December, 1985.

Notary Public *

* See copy marked "Notarized Copy" for signatures.

The foregoing APPENDIX TO JURISDICTIONAL STATEMENT is respectfully submitted.

Jean Rosenbaum

JEAN ROSENBAUM, Appellant,
acting Pro Se *

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

* See copy marked "Notarized Copy" for original signatures, and notarization of APPENDIX TO JURISDICTIONAL STATEMENT, revised version.

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Appellant, acting Pro Se in the aforestated cause, that she has read the foregoing revised APPENDIX to JURISDICTIONAL STATEMENT by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

She also states that the original APPENDIX to JURISDICTIONAL STATEMENT by her subscribed was timely-filed by United States Mail with Clerk of Supreme Court of the United States on December 31, 1985, and the copies thereof returned to her voluntarily for revision by the Clerk of that Court on January 7, 1986 (received

by her on January 13, 1986). Pursuant to Supreme Court Rule 33.7, filing is not deemed untimely if the revised version is returned within a reasonable period of time (21 days from January 7, 1986, according to the various Clerks of the Supreme Court of the United States).

Jean Rosenbaum
JEAN ROSENBAUM, Pro Se *

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 25th day of January, 1986.

Margaret E. Swanson
Notary Public *
My Commission Expires [illegible]

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

* See copy marked "Notarized Copy" for original signatures.